

2009

State of Utah v. Ricky Angilau : Brief of Appellant

Utah Supreme Court

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Mark L. Shurtleff; Attorney General.

Ronald J. Yengich, Elizabeth Hunt; Yengich, Rich and Xaiz; Attorneys for Defendant.

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IN THE UTAH SUPREME COURT

STATE OF UTAH, Appellee/Plaintiff, v. RICKY ANGILAU, Appellant/Defendant.	Case No. 20090538 (<u>INCARCERATED</u>)
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OPENING BRIEF OF APPELLANT

This is the opening brief of the appellant, Ricky Angilau, in his interlocutory appeal from the trial court's order upholding the constitutionality of the direct file statute, entered in the Third District Court in and for Salt Lake County, State of Utah, the Honorable Vernice Trease presiding.

MARK L. SHURTLEFF
UTAH ATTORNEY GENERAL
160 East 300 SOUTH, 6TH Floor
Post Office Box 140854
Salt Lake City, Utah, 84114-0854

RONALD J. YENGICH #3580
ELIZABETH HUNT #5292
YENGICH, RICH & XAIZ
Attorneys for Defendant
175 East 400 South, Suite 400
Salt Lake City, Utah 84111
Tel (801)355-0320
Fax (801)364-6026

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MARK L. SHURTLEFF
UTAH ATTORNEY GENERAL
160 East 300 SOUTH, 6TH Floor
Post Office Box 140854
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RONALD J. YENGICH #3580
ELIZABETH HUNT #5292
YENGICH, RICH & XAIZ
Attorneys for Defendant
175 East 400 South, Suite 400
Salt Lake City, Utah 84111
Tel (801)355-0320
Fax (801)364-6026

TABLE OF CONTENTS

STATEMENT OF JURISDICTION	1
ISSUE, STANDARD OF REVIEW AND PRESERVATION	1
CONSTITUTIONAL PROVISIONS, STATUTES AND RULES.	2
STATEMENT OF THE CASE	3
NATURE OF THE CASE, COURSE OF PROCEEDINGS AND DISPOSITION	3
STATEMENT OF FACTS	3
SUMMARY OF ARGUMENTS	5
ARGUMENTS	6
I. JUVENILE COURTS SERVE COMPELLING STATE INTERESTS IN MEETING THE UNIQUE DEVELOPMENTAL NEEDS OF CHILDREN..	6
II. THE DECISION TO PROSECUTE A CHILD IN ADULT COURT IS A DRASTIC AND IMPORTANT ONE THAT REQUIRES FUNDAMENTAL ELEMENTS OF DUE PROCESS OF LAW, AND THAT CANNOT CONSTITUTIONALLY BE LEFT TO THE UNBRIDLED DISCRETION OF A PROSECUTOR.	11
III. THE DIRECT FILE STATUTE FAILS TO PROVIDE DUE PROCESS OF LAW AND LEAVES THE DECISION OF WHETHER CHILDREN WILL BE PROSECUTED IN ADULT COURT OR ADJUDICATED IN JUVENILE COURT TO THE UNBRIDLED DISCRETION OF THE PROSECUTOR.	15
IV. THE DIRECT FILE STATUTE VIOLATES ARTICLE I §§ 24 and 7, AND ARTICLE VI §26 OF THE UTAH CONSTITUTION AND FEDERAL EQUAL PROTECTION.	24

A.	STATE CONSTITUTIONAL ANALYSIS	24
1.	State Uniform Operation of Laws	24
2.	State Prohibition of Special Laws.	33
3.	State Due Process.	35
B.	FEDERAL EQUAL PROTECTION ANALYSIS	35
V.	THE TRIAL COURT’S LEGAL ANALYSIS IN UPHOLDING THE DIRECT FILE STATUTE WAS INCORRECT.	38
A.	The Direct File Statute Grants Prosecutors Greater Discretion than did the Direct File Statute Stricken as Unconstitutional in Mohi.	38
B.	The Constitutions Must Apply to the Decision as to Whether a Juvenile is Prosecuted in Adult Court or in Juvenile Court.	40
C.	The Trial Court’s Effort to Reconcile Statutory Conflicts Was Incorrect and Exceeded Proper Judicial Bounds.	42
	CONCLUSION.	47
	ADDENDUM A - TRIAL COURT’S MEMORANDUM DECISION	
	ADDENDUM B - CURRENT DIRECT FILE STATUTE	
	ADDENDUM C - DIRECT FILE STATUTE IN EFFECT AT THE TIME <u>MOHI</u> WAS WRITTEN	
	ADDENDUM D - CONSTITUTIONAL PROVISIONS AND STATUTES	

TABLE OF AUTHORITIES

CASES

Adarand Constructors Inc. v. Pena, 515 U.S. 200 (1995).	36
American Bush v. City of South Salt Lake, 2006 UT 40, 140 P.3d 1235	41
Anderson v. Anderson, 416 P.2d 308 (Utah 1966).	7
Angilau v. Winder <i>et al</i> , Case No. 20090457.	2
Angilau v. Winder, Case No. 20090677.	3
Belotti v. Baird, 443 U.S. 622 (1979)	25, 37
Board of Education of Jordan School District v. Sandy City Corporation, 2004 UT 37, 94 P.3d 234.	46
Bott v. DeLand, 922 P.2d 732 (Utah 1996), overruled in part on other grounds by Spackman v. Bd. of Educ. of Box Elder County Sch. Dist., 2000 UT 87, 16 P.3d 533.	22
Breed v. Jones, 421 U.S. 519 (1975)	25, 37
Burnham v. Hayward, 663 P.2d 65 (Utah 1983)	12 , 13, 41
Burns v. Boyden, 2006 UT 14, 133 P.3d 370.	46
Christiansen v. Harris, 163 P.2d 314 (Utah 1945).	11, 16, 20
Clark v. Jeter, 486 U.S. 456 (1988).	36
Dean v. Rampton, 556 P.2d 205 (Utah 1976).	47
Dexter v. Bosko, 2008 UT 29, 184 P.3d 592.	22
Field v. Boyer Co., L.C., 952 P.2d 1078 (Utah 1998)	44
Hansen v. Wilkinson, 658 P.2d 1216 (Utah 1983).	44
Hodel v. Indiana, 452 U.S. 314 (1981).	36

Houskeeper v. State, 2008 UT 78, 197 P.3d 636	9, 10, 39
In re Adoption of B.W.G., 2007 UT App 278, 167 P.3d 1099	1
In re Gault, 387 U.S. 1 (1967).	25, 37
In re L.G.W., 641 P.2d 127 (Utah 1982).	19
In re N.H.B., 769 P.2d 844 (Utah App. 1989).	<i>passim</i>
In re Tanner, 549 P.2d 703 (Utah 1976).	6, 23
Kelley v. Kaiser, 992 F.2d 1509 (10 th Cir. 1993)	20, 41
Kent v. United States, 383 U.S. 541 (1966)	12-41
Marbury v. Madison, 5 U.S. (1 Cranch) 137, 2 L.Ed 60 (1803)	41
Merrill v. Utah Labor Com’n, 2009 UT 26, 2009 WL 1098294	1, 21-36
Plyler v. Doe, 457 U.S. 202 (1982).	25, 36, 37
Roper v. Simmons, 543 U.S. 551 (2005).	7- 37
Soriano v. Graul, 2008 UT App 188, 186 P.3d 960.	18
State in re Atcheson, 575 P.2d 181 (Utah 1978).	12, 13, 41
State v. Bell, 785 P.2d 390 (Utah 1989)	19, 26, 40
State in re Clatterbuck, 700 P.2d 1076 (Utah 1985)	12, 13, 16, 27
State v. Copeland, 765 P.2d 1266 (Utah 1988).	36
State v. Davis 184 P. 161 (Utah 1919).	46
State v. D.M.Z., 830 P.2d 314 (Utah App. 1992).	11, 13, 41
State v. Eldredge, 773 P.2d 29 (Utah), cert. denied, 493 U.S. 814 (1989)	2
State v. King, 2008 UT 54, 190 P.3d 1283.	28

State v. Mohi, 901 P.2d 991 (Utah 1995)	<i>passim</i>
State v. Nelson-Waggoner, 2004 UT 29, 94 P.3d 186.	2
State v. Schofield, 2002 UT 132, 63 P.3d 667	9, 10, 23, 39
Thompson v. Oklahoma, 487 U.S. 815 (1988) (<i>plurality</i>).	8
United States v. Carolene Products Company, 304 U.S. 144 (1938)	25, 37
United States v. Lindsay, 184 F.3d 1138 (10th Cir.), cert. denied, 145 L.Ed.2d 343 (1999).	2
Utah Farm Bureau Insurance Company v. Utah Insurance Guarantee Association, 564 P.2d 751 (Utah 1977).	21, 34
Versluis v. Guaranty Nat. Companies 842 P.2d 865 (Utah 1992).	17
Wengler v. Druggists Mutual Insurance Company, 446 U.S. 142 (1980).	36
Wood v. University of Utah Medical Center, 67 P.3d 436, 449 2002 UT 134 (Utah 2002).	36

CONSTITUTIONAL PROVISIONS AND STATUTES

Constitution of Utah, Article I § 7.	11, 20, 23, 35
Constitution of Utah, Article I § 9.	22-23
Constitution of Utah, Article I § 24	21, 23, 24
Constitution of Utah, Article I § 27.	23
Constitution of Utah, Article V § 1.	46
Constitution of Utah, Article VI § 1.	46
Constitution of Utah, Article VI § 26.	21, 23, 34
United States Constitution, Amendment XIV.	11, 20, 23, 35
Utah Code Ann. §62A-7-104.	9

Utah Code Ann. §78A-3-102	1
Utah Code Ann. § 78-3a-25 (1993)	6, 38
Utah Code Ann. § 78A-5-102.	45
Utah Code Ann. §78A-6-102	9- 40
Utah Code Ann. § 78A-6-103	9-45
Utah Code Ann. § 78A-6-111	9, 10, 40
Utah Code Ann. § 78A-6-116.	42, 43, 44, 45
Utah Code Ann. §78A-6-601.	45
Utah Code Ann. § 78A-6-60330-31
Utah Code Ann. § 78A-6-701.	14-39
Utah Code Ann. § 78A-6-702	16, 42
Utah Code Ann. § 78A-6-703	31, 42
Utah Code Ann. §78A-6-704..	19, 32
Utah Code Ann. § 78A-7-104.	40
Utah Code Ann. § 78A-7-106.	16, 39, 45

OTHER AUTHORITIES

2a C. Sands, <i>Sutherland Statutory Construction</i> , § 47.01 (4 th ed. 1973).	44
Floor debates on Senate Bill 111 in the 1995 General Session of the 51 st Legislature	17, 24, 39
http://www.ksl.com/?sid=5424474&autostart=y&nid=148	5, 30
Katz Levi, “State v. Mohi: State Sanctioned Abuse,” 10	

Journal of Law and Family Studies 173 (2007)	12, 14, 21, 40, 41
<u>Official Report of the Proceedings and Debates of the Convention Assembled at Salt Lake City on the Fourth Day of March, 1895, to Adopt a Constitution for the State of Utah</u> (1898)	<u>22</u>
<u>Roper v. Simmons</u> , 543 U.S. 551 (2005) <i>amicus</i> briefs	7, 26, 34
Sutherland, <u>Statutory Construction</u>	46
Utah Commission on Criminal and Juvenile Justice studies	
“Minority Overrepresentation in the Juvenile Justice System,”	
“Race in Juvenile Sentencing in Utah,” and	
“Bootstrapping: Is It More Likely to Occur with Youth Who Are of Color and/or from Low-Income Families?”	17, 27

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STATEMENT OF JURISDICTION

Utah Code Ann. §78A-3-102 (3)(h)¹ provides this Court's jurisdiction over this interlocutory appeal from a criminal case involving a first degree felony charge. The petition for interlocutory appeal was timely filed on June 29, 2009 (R. 450) from the trial court's June 15, 2009 order denying the motion to dismiss (R. 439-445).

ISSUE, STANDARD OF REVIEW AND PRESERVATION

Is the direct file statute, under which sixteen-year-old Angilau stands charged with murder in adult court, unconstitutional?

Standard of Review: Angilau challenges the district court's legal conclusions, which are entitled to no deference on appeal, but are reviewed for correctness. See, e.g., In re Adoption of B.W.G., 2007 UT App 278, ¶ 4, 167 P.3d 1099. Statutes are presumed

¹With the exception of the 1993 version of the direct file statute at issue in State v. Mohi, 901 P.2d 991 (Utah 1995), the 2009 versions of all statutes are at issue here and copied in the addendum.

constitutional, and parties challenging their constitutionality bear the burden. See, e.g., Merrill v. Utah Labor Com’n, 2009 UT 26, ¶ 5, 2009 WL 1098294.

Preservation: Counsel for Angilau preserved the issue in a motion to dismiss and supporting memorandum (R. 28-56), a reply memorandum (R. 78-405), and oral argument (R. 4/6/2009, *passim*). Angilau also filed a petition for emergency extraordinary relief in this Court in Angilau v. Winder et al, Case No. 20090457-SC raising the statutory challenge (E.g. 446-48).²

CONSTITUTIONAL PROVISIONS AND STATUTES

The controlling constitutional provisions and statutes are in Addendum D.

²Counsel for Angilau believe that the issue was properly preserved. Out of an abundance of caution, however, they assert that the issue and subissues before the Court would merit full resolution under the plain error and extraordinary circumstances doctrines in the event of inadvertent waivers by counsel. Courts utilize the extraordinary circumstances doctrine in cases involving “rare procedural anomalies,” as a “safety device” to avoid manifest injustice. State v. Nelson-Waggoner, 2004 UT 29, ¶ 23, 94 P.3d 186.

The plain error doctrine requires a showing that an obvious and harmful error occurred which prejudiced the defendant’s substantial rights, although the obviousness prong may be relaxed when a highly prejudicial error occurred which is more obvious in hindsight than it likely was before the trial court. See, e.g., State v. Eldredge, 773 P.2d 29, 35 and n.8 (Utah), cert. denied, 493 U.S. 814 (1989). Constitutional errors are particularly appropriate for correction under the plain error doctrine. See, e.g., United States v. Lindsay, 184 F.3d 1138, 1140 (10th Cir.), cert. denied, 145 L.Ed.2d 343 (1999).

As is demonstrated herein, the direct file statute and trial court’s legal analysis in upholding it so deviate from well-established constitutional norms and rules of statutory construction, and so prejudice Angilau as to merit full relief on appeal under both these doctrines.

STATEMENT OF THE CASE

NATURE OF THE CASE, COURSE OF PROCEEDINGS AND DISPOSITION

The State charged Angilau by information with murder, a first degree felony, obstructing justice, carrying a concealed dangerous weapon, both second degree felonies, and possessing a firearm in school, a class A misdemeanor (R. 1-2). The court declared him indigent (R. 7).

Angilau moved to dismiss the information on the basis that the direct file statute underpinning district court jurisdiction is unconstitutional (R. 28-56). The State opposed the motion (R. 58-77), Angilau replied (R. 78-405), and the court heard argument (R. 406; T. 4/6/2009 at 1-34). While the case was under advisement in the trial court, this Court denied Angilau's petition for emergency extraordinary relief (R. 448). The trial court denied the motion to dismiss and upheld the constitutionality of the direct file statute (R. 439-445).

The Court granted this interlocutory appeal from the denial of the motion to dismiss. The Court declined to consolidate this appeal with Angilau's related direct appeal challenging the legality of his incarceration in the adult jail, Angilau v. Winder, Case No. 20090677, but did recall that appeal from the court of appeals.

STATEMENT OF FACTS

The facts underlying the offenses charged have yet to be presented under oath in a preliminary hearing or trial. The probable cause statement included in the information,

alleges:

On January 21, 2009, in Salt Lake County at Kearns High School, RICKY ANGILAU and another juvenile male, E.F. ran into each other in the hall and agreed to meet off school property to fight at 5533 South Red Lodge Drive. The location of the fight and the shooting is within 1000 feet of Kearns High School. While walking to the fight location, RICKY ANGILAU showed a juvenile friend that he had a gun in his waistband under his shirt. RICKY ANGILAU and E.F. started to fight each other RICKY ANGILAU pulled out a gun and fired one shot into the air. RICKY ANGILAU then lowered the gun pointing it at a group of people and fired one shot at the group. The bullet struck Esteban Manuel Saidi in the lower abdomen and he fell to the ground. Esteban Saidi was taken to the Intermountain Medical Center and pronounced dead several hours later from his injuries. An autopsy by Dr. Todd Grey of the Utah Office of the Medical Examiner determined the cause of death to be a gunshot wound, and the manner of death to be homicide.

The post-Miranda statement of RICKY ANGILAU that he exchanged words with E.F. and decided to fight each other. They went to an agreed upon location and began to fight with a group of students gathered around the combatants. RICKY ANGILAU indicated that he began to tire and pulled the pistol out of his pocket and fired one time into the air. He intentionally pulled the trigger again while pointing the gun straight ahead in the direction of a group of individuals. He saw one of the students stumble and fall to the ground. He then fled to a friend's house. RICKY ANGILAU stated he ran to the friend's house he threw the pistol over the fence of one of the houses he passed.

[Sic] (R. 3-4).³

On January 26, 2009, the District Attorney explained the basis of the decision to prosecute sixteen-year-old Angilau in adult court, in a widely televised and published press conference, wherein she stated,

³Counsel for Angilau do not concede the accuracy of the probable cause statement, but include it here to summarize the evidence the State apparently hopes to produce to support the charges.

At 16 years old, because of his participation in a gang and the activities that he engaged in on this particular day, he now faces the potential of spending the rest of his life in prison.

See R. 85, 236037. See also, e.g., <http://www.ksl.com/?sid=5424474&autostart=y&nid=148>.

The District Attorney's belief that Angilau is a gang member or participant, which materially influenced the choice to file the case directly in adult court, see id., was erroneous. Angilau is not a gang member and has not participated in a gang.⁴ Rather, prior to his arrest and incarceration in the adult jail, Angilau was physically active in sports, working hard at school, and participated regularly in family, scouting and church activities (E.g., R. 216-233, 545; T. 9/14/2009 at 5).

SUMMARY OF ARGUMENTS

Our juvenile courts serve compelling interests in rehabilitating children and strengthening families. The decision to prosecute a child in adult court is a drastic and important one requiring due process of law, which cannot constitutionally be left to the unbridled discretion of a prosecutor.

The current direct file statute, Utah Code Ann. § 78A-6-701, provides no guidance

⁴Counsel for Angilau sought evidence that Angilau is in a gang through subpoenas to the Salt Lake City Police Department and the Salt Lake County Sheriff's Metro Gang Unit on May 14, 2009 (R. 421-24), and through a discovery request to the prosecution on May 20, 2009 (R. 425-28). As of the September 14, 2009 hearing on the motion to release Angilau from Pretrial Services, no such evidence had been produced (T. 9/14/2009 at 13).

for prosecutors' discretion to file such cases in adult court by way of information or indictment, or in juvenile court by petition. The statute bears the same constitutional flaw as the direct file statute stricken on constitutional grounds in State v. Mohi, 901 P.2d 991 (Utah 1995), Utah Code Ann. § 78-3a-25(6)(b) (1993). In fact, the prosecutorial discretion under the current statute is greater than that at issue in Mohi, because there is no longer a recall hearing and no direct appeal from the decision to charge in adult court under the current direct file statute. The direct file statute runs afoul of several state and federal constitutional provisions discussed herein, primarily because it serve no legitimate purpose, and dis-serves the codified purposes of the Juvenile Court Act of which it is a part.

The trial court's analysis upholding the direct file statute violates basic tenets of statutory construction and constitutional law. Contrary to the court's reasoning, the post-Mohi amendments to the statute do not alleviate the unconstitutional prosecutorial discretion addressed in Mohi. Rather, they augment it.

This Court should reverse the trial court's order, strike the direct file statute on constitutional grounds, and order the case dismissed from the adult court.

ARGUMENTS

I. JUVENILE COURTS SERVE COMPELLING STATE INTERESTS IN MEETING THE UNIQUE DEVELOPMENTAL NEEDS OF CHILDREN.

It has long been recognized that an inherent element of civilized society is its

provision for its children. In re Tanner, 549 P.2d 703, 705 (Utah 1976). Our juvenile courts exist in order to serve the public interest in meeting the special developmental needs of children. Anderson v. Anderson, 416 P.2d 308, 309-310 (Utah 1966).

Scientific and sociological studies demonstrate that the brains of adolescent children are not yet fully developed, particularly in the frontal lobes, which control decision-making. By reviewing the *amicus* briefs filed in Roper v. Simmons, 543 U.S. 551 (2005), included in the record at R. 120-200, this Court may confirm that children who are under the age of eighteen have brains which are not yet developed, and as a result, they lack the ability to control their emotions and impulses, anticipate the consequences of their actions, accurately perceive risks to themselves or others, accurately gage the impact of their acts and responses, or to make reasoned choices of behavior. See R. 137-145, 180-197. Because of their undeveloped brains, children of this age are not equipped to understand their rights, assist in their own defense or make the decisions required in adult prosecutions. Rather, they often make choices, such as confessing falsely to serious crimes during interrogation or confabulating details consistent with false confessions, which undermine the reliability of the outcome of adult prosecutions. See id. and R. 160-63. Because of their undeveloped brains, children are far less likely than adults to be deterred by statutes. See R. 137-47, 136-153.

After reviewing the studies, our Supreme Court has recognized that children have an underdeveloped sense of responsibility and lack maturity, and thus often take impetuous and reckless actions and make decisions without thorough consideration. Roper v. Simmons, 543 U.S. 551, 569 (2005). Adolescents are less likely to restrain their impulses, understand

the perspectives of others, and consider alternative actions. Id. Children's poor choices and actions are influenced by their impressionable nature and their vulnerability to peer pressure and other negative influences. Id. They have less control over their environments, or less experience controlling their environments, than adults do, and their character traits are also less well-formed than adults'. Id. Children are more vulnerable than adults to psychological damage. Id. at 569-70.

The biological and developmental differences in children lead to reasonable conclusions that children's misbehaviors are especially worthy of forgiveness, and that their characters are possible to redeem and reform. Roper at 569-70. The vast majority of children who engage in illegal and risky behaviors as adolescents grow out of them as they become adults. Id.

Accordingly, just as we limit the privileges and responsibilities given to children (e.g. voting, marrying without parental consent, serving on juries), we limit children's liability for what would be criminal behavior in adults. Even for the most heinous of capital murders, we recognize that children do not weigh their actions prior to taking them as adults do, and thus their misbehavior is not as morally reprehensible. See id. See also, Thompson v. Oklahoma, 487 U.S. 815, 835-38 (1988) (*plurality*). As our scientific and sociological understanding of human development evolves, so too do our national standards of decency as a maturing society. For instance, we no longer execute children before their understanding of their own humanity can develop, and reserve the ultimate punishment of death for those over the age of eighteen, the age which frequently marks the division

between childhood and adulthood. See Roper, 543 U.S. at 572-74.

In Utah, our juvenile courts exist because we recognize that children are in their formative years, and if given appropriate education, rehabilitation and treatment within their families, can grow to be productive members of society. State v. Schofield, 2002 UT 132, ¶ 16, 63 P.3d 667. We keep children in the juvenile court where their best interests are the primary focus, to redirect their behavior toward obedience to the law, and to protect them from the adverse consequences of more severe sentences and permanent records attendant to adult courts. See id. See also, Houskeeper v. State, 2008 UT 78, ¶¶ 27 and 50 and n.21, 197 P.3d 636. Juveniles are subject to confinement only until they reach the age of 21 in the juvenile system, whereas they may be imprisoned for life in the adult system, see, e.g., In re N.H.B., 769 P.2d 844, 847-49 (Utah App. 1989). Juvenile courts are generally closed to the public, to serve the compelling government interest in shielding juveniles from publicity that might otherwise hinder their full rehabilitation. See, e.g., In re N.H.B., 769 P.2d 844, 847-49 (Utah App. 1989).

Our juvenile courts are very much focused on strengthening the family unit. Parents are expected to attend and participate in their children's court hearings and are subject to the jurisdiction of the juvenile courts' authority to require parents to participate in the children's rehabilitative treatment when the children are placed in secure youth facilities. See, e.g., Utah Code Ann. §§ 78A-6-103(1)(k) and 78A-6-111. By statute, our juvenile courts are designed to keep children with their parents in the course of their rehabilitation. Utah Code Ann. §78A-6-102(5). If it is necessary to house children in secure facilities, we require those

facilities to comply with Juvenile Justice Services standards, which are carefully designed in an effort to insure that the holding conditions are humane, safe, and foster continuing education and positive child development. See, e.g., Utah Code Ann. §62A-7-104. In sum, our juvenile courts are designed to serve numerous compelling governmental and societal interests.⁵

II. THE DECISION TO PROSECUTE A CHILD IN ADULT COURT IS A DRASTIC AND IMPORTANT ONE THAT REQUIRES FUNDAMENTAL ELEMENTS OF DUE PROCESS OF LAW, AND THAT CANNOT CONSTITUTIONALLY BE LEFT TO THE UNBRIDLED DISCRETION OF A PROSECUTOR.

⁵Utah Code Ann. §78A-6-102(5) codifies these important purposes of our juvenile courts:

- (a) promote public safety and individual accountability by the imposition of appropriate sanctions on persons who have committed acts in violation of law;
- (b) order appropriate measures to promote guidance and control, preferably in the minor's own home, as an aid in the prevention of future unlawful conduct and the development of responsible citizenship;
- (c) where appropriate, order rehabilitation, reeducation, and treatment for persons who have committed acts bringing them within the court's jurisdiction;
- (d) adjudicate matters that relate to minors who are beyond parental or adult control and to establish appropriate authority over these minors by means of placement and control orders;
- (e) adjudicate matters that relate to abused, neglected, and dependent children and to provide care and protection for minors by placement, protection, and custody orders;
- (f) remove a minor from parental custody only where the minor's safety or welfare, or the public safety, may not otherwise be adequately safeguarded; and
- (g) consistent with the ends of justice, act in the best interests of the minor in all cases and preserve and strengthen family ties.

Under Article I § 7 of the Utah Constitution and the Fourteenth Amendment to the United States Constitution, the fundamental elements of due process to be afforded in any case wherein life or liberty is at stake are:

(a) the existence of a competent person, body, or agency authorized by law to determine the questions; (b) an inquiry into the merits of the question by such person, body or agency; (c) notice to the person of the inauguration and purpose of the inquiry and the time at which such person should appear if he wishes to be heard; (d) right to appear in person or by counsel; (e) fair opportunity to submit evidence, examine and cross-examine witnesses; (f) judgment to be rendered upon the record thus made.

Christiansen v. Harris, 163 P.2d 314, 317 (Utah 1945).

There is Utah case law intimating that the choice of the adult or juvenile court forum involves no liberty interest. See, e.g., State v. D.M.Z., 830 P.2d 314, 316 (Utah App. 1992). In State v. Mohi, 901 P.2d 991 (Utah 1995), the Court tacitly rejected this contention, id. at 995-96, and properly so. The choice to charge a juvenile in adult court certainly involves liberty interests, given that children are subject to confinement only until they reach the age of 21 in the juvenile system, whereas they may be imprisoned for life in the adult system, see, e.g., In re N.H.B., 769 P.2d 844, 847-49 (Utah App. 1989). Moreover, given that children prosecuted in adult court are often housed in adult facilities, life may also be at stake. See, e.g., Katz Levi, “State v. Mohi: State Sanctioned Abuse,” 10 Journal of Law and Family Studies 173, 174-76 and accompanying notes (2007) (explaining how incarcerating children in adult jails endangers children, and increases the risk of suicide), in the record at R. 201-234.

An incomplete reading of old Utah cases might give the impression that the juvenile courts exist by virtue of legislative grace, and that children may be prosecuted in adult court

anytime, without a hearing to determine the propriety of the forum. See, e.g. Burnham v. Hayward, 663 P.2d 65, 67 (Utah 1983), citing State in re Atcheson, 575 P.2d 181 (Utah 1978).

Carefully considered opinions recognize the critical importance of the decision as to whether a child will be prosecuted in adult court, and the concomitant need to afford the child and our society appropriate procedural protections in the decision making process. E.g., State in re Clatterbuck, 700 P.2d 1076, 1078 (Utah 1985); State v. Mohi, 901 P.2d 991, 995-996 (Utah 1995), and In re N.H.B., 777 P.2d 487, 490 (Utah App. 1989), citing Kent v. United States, 383 U.S. 541, 553 (1966). Such a decision must be premised on a thorough investigation, comply with statutory directives, and be sufficiently detailed to insure thorough appellate review. See Clatterbuck and Kent, supra.⁶

⁶The Kent Court appended a list of factors created by judges, the U.S. Attorney, and various concerned groups, as an example of the proper scope of the inquiry. The factors include:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.
2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.
3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
4. The prosecutive merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment (to be determined by consultation with the United States Attorney).
5. The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the U.S. District Court for the District of Columbia.
6. The sophistication and maturity of the juvenile as determined by

Counsel for Angilau ask the Court to reconsider and overrule the precedents such as D.M.Z., Burnham and Atcheson, *supra*, because the choice to charge a juvenile in adult court certainly involves liberty interests, given that children are subject to confinement only until they reach the age of 21 in the juvenile system, whereas they may be imprisoned for life in the adult system, *see, e.g., In re N.H.B.*, 769 P.2d 844, 847-49 (Utah App. 1989). Counsel ask the Court to reconsider and overrule the authorities intimating that no process is due in this context, because, given that children prosecuted in adult court are often housed in adult facilities, life may also be at stake. *See, e.g., Katz Levi*, “State v. Mohi: State Sanctioned Abuse,” 10 Journal of Law and Family Studies 173, 174-76 and accompanying notes (2007) (explaining how incarcerating children in adult jails endangers children, and increases the risk of suicide).

As this case demonstrates, one politically elected prosecutor should not have the unchecked power to send a child into the adult system, particularly because the statutory scheme guarantees no judicial review to correct erroneous decisions. Under the terms of the direct file statute, the only way a child whose case is direct-filed in adult court can get back to

consideration of his home, environmental situation, emotional attitude and pattern of living.

7. The record and previous history of the juvenile, including previous contacts with the Youth Aid Division, other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation to this Court, or prior commitments to juvenile institutions.

8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court.

Kent, 383 U.S. 541, 566-67.

juvenile court is if the offenses charged are dismissed or result in a verdict of acquittal. See Utah Code Ann. § 78A-6-701(3)(b). The statute directs that a child stays in adult court even if the preliminary hearing magistrate determines that the prosecutor overcharged the case and reduces the charges prior to binding the case over. See id.

The liberty and life interests which realistically are at stake require judicial scrutiny of laws and constitutional protection of children in this legal context. As the Court recognized in Mohi,

“[T]here is no place in our system of law for reaching a result of such tremendous consequences [prosecuting children in the adult system] without ceremony-without a hearing, without effective assistance of counsel, without a statement of reason. It is inconceivable that a court of justice dealing with adults would proceed in this manner. It would be extraordinary if society's special concern for children ... permitted this procedure. “

State v. Mohi, 901 P.2d 991, 996 n.2., quoting Kent, 383 U.S. at 554.

III. THE DIRECT FILE STATUTE FAILS TO PROVIDE DUE PROCESS OF LAW AND LEAVES THE DECISION OF WHETHER CHILDREN WILL BE PROSECUTED IN ADULT COURT OR ADJUDICATED IN JUVENILE COURT TO THE UNBRIDLED DISCRETION OF THE PROSECUTOR.

The direct file statute, §78A-6-701, which purports to grant the adult court jurisdiction over sixteen-year-old Angilau, is in the Juvenile Court Act, under Part 7 entitled, “transfers of jurisdiction.” It states in full,

(1) The district court shall have exclusive original jurisdiction over all persons 16 years of age or older charged by information or indictment with:

(a) an offense which would be murder or aggravated murder if committed by an adult; or

(b) an offense which would be a felony if committed by an adult if the minor has been previously committed to a secure facility as defined in Section 62A-7-101. This Subsection (1)(b) shall not apply if the offense is committed in a secure facility.

(2) When the district court has exclusive original jurisdiction over a minor under this section, it also has exclusive original jurisdiction over the minor regarding all offenses joined with the qualifying offense, and any other offenses, including misdemeanors, arising from the same criminal episode. The district court is not divested of jurisdiction by virtue of the fact that the minor is allowed to enter a plea to, or is found guilty of, a lesser or joined offense.

(3)(a) Any felony, misdemeanor, or infraction committed after the offense over which the district court takes jurisdiction under Subsection (1) or (2) shall be tried against the defendant as an adult in the district court or justice court having jurisdiction.

(b) If the qualifying charge under Subsection (1) results in an acquittal, a finding of not guilty, or a dismissal of the charge in the district court, the juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor.

Under 78A-6-701, prosecutors may direct file charges in adult court against those 16 and 17 year old children who are charged with murder or aggravated murder, or who commit a felony after having been committed to a secure facility, but only if those children are prosecuted by indictment or information. See id. Neither this statute nor any other requires a prosecutor to charge these children by indictment or information. Rather, prosecutors have full discretion to proceed in juvenile court by filing a petition under Utah Code Ann. § 78A-6-103(1)(a), which provides, in relevant part:

(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning:

(a) a child who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding offenses in Subsection 78A-7-106(2)[.⁷]

In contrast to the direct filing statute, the Serious Youth Offender statute requires prosecutors to file informations which result in adult prosecution unless the juvenile court retains the case after the preliminary hearing.⁸ The direct file statute does not require the filing of an indictment or information at all, but provides district court jurisdiction in cases wherein the prosecutor opts to file those pleadings, rather than proceed by petition. See 78A-6-701(1), *supra*. These statutes are properly interpreted according to the plain language enacted by the legislature. Versluis v. Guaranty Nat. Companies 842 P.2d 865, 867 (Utah 1992)(when interpreting a statute the Court can “presume that the Legislature used each term advisedly, and ... give effect to each term according to its ordinary and accepted meaning.”).

By choosing to file an information or an indictment under 78A-6-701, prosecutors not only select the charges, they select the forum. See id. There is no provision in the direct file statute or any other that requires any investigation, inquiry, hearing, statement of

⁷Section 78A-7-106 governs those misdemeanors and infractions which are subject to prosecution in justice courts.

⁸Section 78A-6-702 provides in that regard,

(1) Any action filed by a county attorney, district attorney, or attorney general charging a minor 16 years of age or older with a felony shall be by criminal information and filed in the juvenile court if the information charges any of the following offenses: ...

(Emphasis added).

rationale, judicial decision or appellate review of any direct file decision, to properly adjudicate the propriety of prosecuting Angilau or any other child charged under this statute in adult court. But see, e.g., Kent, Clatterbuck, Mohi, and Christiansen, supra.

A discretionary decision by one politically elected prosecutor is no substitute for the proper Kent inquiry and judicial determination and appellate review of the critical question as to whether a child should be prosecuted as an adult or in juvenile court. See, e.g., id.⁹ Because there are no legislative guidelines limiting the prosecutors' exercise of unbridled discretion to direct file these cases, the current direct filing scheme is unconstitutional under Mohi, supra. See id.

By reviewing the floor debates on Senate Bill 111 in the 1995 General Session of the 51st Legislature,¹⁰ the Court may confirm that the senate apparently adopted the subsection of the statute automatically transferring cases of 16 and 17 year olds charged by information

⁹While it is not known if these factors are at play in the instant case, it is an unfortunate demonstrated statistical fact that racial and financial discrimination play a role in how juveniles are treated in our judicial system. The Utah Commission on Criminal and Juvenile Justice studies "Minority Overrepresentation in the Juvenile Justice System," "Race in Juvenile Sentencing in Utah," and "Bootstrapping: Is It More Likely to Occur with Youth Who Are of Color and/or from Low-Income Families?" provide empirical evidence of the unfair treatment of children who are not Caucasian (particularly those descending from Pacific Islands) and children from low income families in our system, which begins at the point of arrest. The studies are in the record at R. 238-405, and are also available on the Commission's webpage, or may be found at <http://www.justice.utah.gov/Research/Race/minorityjuvenile.pdf>; <http://www.justice.utah.gov/Research/Race/RaceAnalysis.pdf>; and http://www.justice.utah.gov/Research/Race/Bootstrapping_2002.pdf.

¹⁰Our courts routinely refer to the floor debates in ascertaining the impetus behind legislative actions. See, e.g., Soriano v. Graul, 2008 UT App 188, ¶2, 186 P.3d 960.

or indictment with murder and aggravated murder in an effort to address the excessive prosecutorial discretion at issue in State v. Mohi, 901 P.2d 991 (Utah 1995), and to expedite the arrival at the prison of those dangerous juveniles who would end up there eventually. See R. 106 and 108. The house debates, also included in the record, do not reflect a clear understanding by our representatives of the constitutional problem with the statute they enacted. See R. 113-119. The key discussions and votes on the bill occurred before the Mohi opinion was issued, and thus the lawmakers did not benefit from or account for the Court's published analysis of the unconstitutionality of the law in effect prior to the amendments.¹¹

While Utah courts have upheld direct filing provisions in the Utah Code prior to Mohi, these decisions turn in large part on the fact that the versions of the statutes at issue allowed for recall hearings to review the propriety of the adult court forum. See, In re N.H.B., 777 P.2d 487, 490-92 (Utah App. 1989) (upholding direct filing statute because, *inter alia*, the recall hearings provided the right to counsel, a record of the proceedings, a hearing, and appropriate findings); State v. Bell, 785 P.2d 390, 402-404 (Utah 1989) (in upholding direct filing statute, which was contingent on the juvenile court's determination that recall to juvenile court was inappropriate, the court recognized, "[O]ur decision is supported by the crucial fact that under the statute in question, the juvenile court has the right and retains the power in the final regard to 'recall control' over the child and bring him or her back into the

¹¹The Mohi opinion was filed on June 15, 1995. Id. 901 P.2d 991. The floor debates occurred in February and March of 1995 (R. 105, 113).

juvenile system.”). There is no recall provision in the current direct file statute.

Nor does the current direct file statute contemplate an appeal of right from the child’s arrival in the adult system, which appeals are provided as a matter of right for children whose cases arrive in adult court through certification from the juvenile court or through a Serious Youth Offender bindover order from juvenile court. See Utah Code Ann. §78A-6-704. In Utah, our appellate courts sit as courts of equity, and afford the broadest scope of appellate review in appeals from juvenile court. In re L.G.W., 641 P.2d 127, 132 (Utah 1982). Under the direct file statute, however, there is no judicial or appellate review of the prosecutor’s decision to place the children in the adult court system.

In Mohi, the Court accepted an interlocutory appeal raising various claims by three juveniles, ultimately held that the direct filing statute at issue there was unconstitutional¹ because it provided unbridled prosecutorial discretion to direct file, and remanded the cases for certification hearings. See 901 P.2d at 994-95 and 1006-07. In *dictum*, the Court indicated that the legislature could constitutionally opt to remove a group of children from the classification of juvenile offenders and could thereby permit the prosecution of those children in adult court without providing them a hearing. See id., 901 P.2d at 1005. In footnotes 14, 19 and 24, however, the Mohi Court repeatedly drew attention to Tenth Circuit authority, Kelley v. Kaiser, 992 F.2d 1509 (10th Cir. 1993), which recognizes that once a state creates a juvenile court system, the federal constitution requires a Kent hearing as a constitutional requirement of any adult court prosecution. See Mohi, 901 P.2d at 1001 n.14, 1003 n.19, and 1005 n.24., citing Kaiser, 992 F.2d at 1515 (“Having created the juvenile

court system, under *Kent*, it is the State's decision to seek to treat a juvenile as an adult that, in and of itself triggers the need for a hearing.”).

The time has come for this Court to recognize that all children do have a constitutional right to be prosecuted in juvenile court, and that the right may be revoked only after due process is afforded. Such a right would properly be premised on the Federal Due Process Clause, see *Kent*, and the Equal Protection Clause, discussed further herein.

Such a right flows naturally from and should be grounded in several Utah Constitutional guarantees. Article I § 7 of the Utah Constitution, the due process provision, has previously been interpreted to require a full panoply of procedural rights in contexts such as this one, wherein both life and liberty are at stake. See, e.g., Christiansen v. Harris, supra. The lives and liberties of our children are no less valuable than those of adults, and the determination of whether their cases are adjudicated in adult or juvenile court has major impact on their liberty, and may also jeopardize their lives. See In re N.H.B. and Katz-Levi article, supra.

The uniform operation of laws provision, Article I § 24, is properly brought to bear to insure that all similarly situated children are treated equally by the laws, and that the legislature does not create unreasonable distinctions in the law, or create laws which classify people in a manner that does not reasonably further statutory goals. See, e.g., Merrill v. Utah Labor Com’n, 2009 UT 26, ¶¶ 6-7, 2009 WL 1098294. All statutory goals of the juvenile court are facilitated by adjudicating all children’s cases in that court, unless a proper inquiry establishes that their cases require adjudication in adult court. See Utah Code Ann. § 78A-6-

102(5) (stating purposes of Juvenile Court Act).

The constitutional provision forbidding the enactment of special or private laws, Article VI § 26, would be an excellent source of a constitutional right of all children to be treated in the juvenile courts, because that provision forbids the legislature to enact laws that create unnatural classifications which separate out people who are not legitimately particularized or separated from, the group of which they are a natural or intrinsic part. See, e.g., Utah Farm Bureau Insurance Company v. Utah Insurance Guarantee Association, 564 P.2d 751, 754 (Utah 1977). Treating children as a natural group, defined by the physiological facts of human brain development, and recognizing their right to have their cases adjudicated in juvenile court absent a full inquiry indicating that they are not suited to be there, honors the letter and spirit of Article VI § 26.

Article I § 9 of the Utah Constitution is a suitable source for a child's constitutional right to have his or her case adjudicated in the juvenile court. The history of this constitutional provision reflects that it was designed to protect arrestees from inhumane detention. Official Report of the Proceedings and Debates of the Convention Assembled at Salt Lake City on the Fourth Day of March, 1895, to Adopt a Constitution for the State of Utah 257-58 (1898) (object of unnecessary rigor clause protects "persons in jail if they shall be treated inhumanely while they are in prison."). Our courts likewise recognize that the guarantee against unnecessarily rigorous treatment applies to the treatment of arrestees and inmates and protects them against unnecessary abuse. E.g., Bott v. DeLand, 922 P.2d 732, 737 (Utah 1996), overruled in part on other grounds by Spackman v. Bd. of Educ. of Box

Elder County Sch. Dist., 2000 UT 87, 16 P.3d 533. Bott demonstrates in the context of an inmate medical malpractice suit that the “unnecessary rigor” inquiry focuses on whether a particular practice is necessary, or whether it is needlessly harsh, dehumanizing or degrading. Id. at 740. Unnecessary rigor is “treatment which is clearly excessive or deficient and unjustified,” as distinguished from the standard irritations and inconveniences of prison life. Id. at 741. Examples of unnecessary rigor include unnecessary exposure to “increased risk of serious harm,” Dexter v. Bosko, 2008 UT 29, ¶ 19, 184 P.3d 592, requiring complete silence from inmates, id. at ¶ 19, or failure to provide timely medical care after receiving numerous requests from an inmate, id., citing Bott, *supra*.

Classifications which remove children from juvenile court, and risk their placement in adult detention facilities, without regard to their actual cases and circumstances, are by nature overbroad and unduly harsh, and dehumanize and degrade those individual children who need and deserve to be protected by the juvenile court system. Recognizing an Article I section 9 right of children to be prosecuted in juvenile court absent a thorough procedural inquiry would thus serve the salutary constitutional goals of preventing unnecessary rigor and cruelty in the prosecution of children.

Finally, children’s constitutional right to be treated as children by our laws and our courts might well be premised on Article I §27 of the Utah Constitution, which recognizes that “[f]requent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.” This State prides itself on providing for its children in a civilized manner, and has a well-developed juvenile court system to protect its

children and strengthen their family units. See, e.g., Tanner, and Schofield, and Utah Code Ann. §78A-6-102(5), *supra*. This State must uniformly protect the rights of children to be prosecuted in juvenile court, unless a thorough and proper inquiry and adjudication calls for prosecution in the adult system. As the Court observed in Mohi,

“[T]here is no place in our system of law for reaching a result of such tremendous consequences [prosecuting children in the adult system] without ceremony-without a hearing, without effective assistance of counsel, without a statement of reason. It is inconceivable that a court of justice dealing with adults would proceed in this manner. It would be extraordinary if society's special concern for children ... permitted this procedure. “

State v. Mohi, 901 P.2d 991, 996 n.2., quoting Kent, 383 U.S. at 554.

IV. THE DIRECT FILE STATUTE VIOLATES ARTICLE I §§ 24 and 7, AND ARTICLE VI §26 OF THE UTAH CONSTITUTION AND FEDERAL EQUAL PROTECTION.

A. STATE CONSTITUTIONAL ANALYSIS

1. State Uniform Operation of Laws

Article I § 24 of the Utah Constitution guarantees uniform operation of laws. In striking the juvenile direct filing provision in State v. Mohi, 901 P.2d 991, 997 (Utah 1995), the Court described the unique application of the state constitutional provision, stating, “[F]or a law to be constitutional under [the provision], it is not enough that it be uniform on its face. What is critical is that the operation of the law be uniform. A law does not operate uniformly if ‘persons similarly situated’ are not ‘treated similarly.’” Id. at 997 (citations and

internal quotation marks omitted, some brackets by the court).

Courts applying the uniform operation of laws provision are to assess the reasonableness of classifications, evaluate the legitimacy of the purpose behind legislative actions, and determine if the classifications reasonably serve those legislative purposes.

See, Mohi, 901 P.2d at 997-999; Merrill v. Utah Labor Com'n, 2009 UT 26, ¶ 9 2009 WL 1098294.

To adjudge the reasonableness of classifications, the Court considers

(1) if there is a greater burden on one class as opposed to another without a reason; (2) if the statute results in unfair discrimination; (3) if the statute creates a classification that is arbitrary or unreasonable; or (4) if the statute singles out similarly situated people or groups without justification.

Merrill, ¶ 10.

The portion of the direct file statute under which Angilau is charged creates two classifications, one aspect premised on the offender's age and one premised on the offense charged.

While age-based classifications are normally reviewed for a rational basis, see, Merrill v. Utah Labor Com'n, 2009 UT 26 ¶ 12, 2009 WL 1098294, the statute at issue should be reviewed with strict scrutiny because it impinges upon the liberty and lives of our children – fundamental rights. Their education is likewise jeopardized by prosecution in the adult system, and is another important right to consider in selecting strict, or at least intermediate scrutiny. See Plyler v. Doe, 457 U.S. 202, 216-17 (1982) (applying what appears to be intermediate scrutiny to law impacting right to education).

While children are likely not a traditional suspect class, our Courts do afford them

special constitutional protections tailored to their vulnerability and special needs. See, e.g., Roper, supra, In re Gault, 387 U.S. 1, 41, 55 (1967) (recognizing juvenile rights against self-incrimination and to counsel); Breed v. Jones, 421 U.S. 519, 541 (1975) (recognizing juvenile right against double jeopardy); Belotti v. Baird, 443 U.S. 622, 633 (1979) (discussing minors' right of access to abortion). The fact that they have no political power because they cannot vote and have no meaningful access to the legislative process, further calls upon the Court to protect their interests. See United States v. Carolene Products Company, 304 U.S. 144, 153 n.4 (1938) (recognizing the duty of the Courts to protect those small and insular minorities who have no meaningful access to participation in the legislative/political process).

The age-based classification results in unjustifiable and severely disparate treatment of similarly situated children. Given the biological facts of brain development, and depending on his or her circumstances, a child who is sixteen years of age might well be far less mature, less blameworthy and not appropriately prosecuted in adult court and held in adult facilities, in comparison to adults who are in the adult system with him, or to younger children who are statutorily entitled to juvenile court adjudication. See Roper briefs (R. 120-200). The absence of a certification hearing or a recall hearing or anything approaching a Kent hearing necessarily results in a statute which is overbroad in its application, sweeping within its ambit children who do not require adult prosecution to satisfy the statutory purposes. Cf. In re N.H.B., 777 P.2d 487, 490-92 (Utah App. 1989) (upholding direct filing statute because, *inter alia*, the recall hearings provided the right to counsel, a record of the proceedings, a hearing, and appropriate findings); State v. Bell, 785 P.2d 390, 402-404 (Utah 1989) (in upholding direct filing statute, which was contingent on the juvenile court's determination that recall to

juvenile court was inappropriate, the court recognized, “[O]ur decision is supported by the crucial fact that under the statute in question, the juvenile court has the right and retains the power in the final regard to ‘recall control’ over the child and bring him or her back into the juvenile system.”).

The offense-based classification is likewise constitutionally problematic because it grants prosecutors super discretion not only to select charges, but also to select the forum. On a given set of facts, a prosecutor might elect to send a child to adult court by charging aggravated murder or murder, or might elect to charge manslaughter, homicide by assault, negligent homicide or any number of lesser offenses, or none at all, if the facts demonstrated that the child was acting in self defense or was otherwise legally justified. It must be borne in mind that the statute indicates these cases will remain in adult court unless the qualifying charge is dismissed or results in acquittal. If the conviction enters by plea or verdict to a lesser offense, the child remains in the adult system. Utah Code Ann. § 78A-6-701. Thus, under the statute, a prosecutor with evidence which amounts to an offense less than murder might be politically, personally or mistakenly motivated to file the murder charge to bring the child into the adult courts, where the prosecutor’s bargaining power is magnified exponentially, because the risks and the harms to the children are immediate and significant. In the absence of any statutory guidelines or limitation, the prosecutor’s unfettered discretion to charge a case as murder or aggravated murder and to charge it in adult or juvenile court may in fact turn on any number of personal and even unconstitutional predilections.¹² The

¹²While it is not known if these factors are at play in the instant case, it is an unfortunate demonstrated statistical fact that racial and financial discrimination play a role in

prosecutor's unchecked discretion supplants what should be a carefully investigated judicial inquiry which is subject to powerful appellate review. But see, e.g., Clatterbuck and Kent, supra.

The constitutional presumption of innocence should also enter into the Court's assessment of the statutory offense classification, because the statutory classification requires an unconstitutional assumption to have any validity. Unless the Court assumes unconstitutionally that the children are guilty of the offenses with which they stand charged, there is no need to protect society from them or expedite their arrival in prison or prosecute them in the adult system. But see, e.g., State v. King, 2008 UT 54, ¶ 21, 190 P.3d 1283 (explaining the function of the constitutional presumption of innocence: to protect individual autonomy from the "government's monopoly on coercive power").

In Mohi, the Court ultimately struck the direct filing statute in effect at that time, because it created two classes of juveniles – those who were subject to juvenile court and those who were selected by prosecutors for adult court prosecutions – without providing any statutory guidance for prosecutors, and thus did not serve the statutorily designated purposes

how juveniles are treated in our judicial system. The Utah Commission on Criminal and Juvenile Justice studies "Minority Overrepresentation in the Juvenile Justice System," "Race in Juvenile Sentencing in Utah," and "Bootstrapping: Is It More Likely to Occur with Youth Who Are of Color and/or from Low-Income Families?" provide empirical evidence of the unfair treatment of children who are not Caucasian (particularly those descending from Pacific Islands) and children from low income families in our system, which begins at the point of arrest. The studies are in the record at R. 238-405, and are also available on the Commission's webpage, or may be found at <http://www.justice.utah.gov/Research/Race/minorityjuvenile.pdf>; <http://www.justice.utah.gov/Research/Race/RaceAnalysis.pdf>; and http://www.justice.utah.gov/Research/Race/Bootstrapping_2002.pdf.

of the juvenile court act in a reasonable way. Id.¹³

The current direct file statute should be stricken under Mohi, because it provides no recall hearing or direct appeal from the filing of the case in adult court, and thus provides greater prosecutorial discretion than the Mohi statute, without serving the interests of the Juvenile Court Act of which it is a part.¹⁴ Utah Code Ann. §78A-6-102(5) recognizes that the juvenile courts' purposes are to:

- (a) promote public safety and individual accountability by the imposition of appropriate sanctions on persons who have committed acts in violation of law;
- (b) order appropriate measures to promote guidance and control, preferably in the minor's own home, as an aid in the prevention of future unlawful conduct and the development of responsible citizenship;
- (c) where appropriate, order rehabilitation, reeducation, and treatment for persons who have committed acts bringing them within the court's jurisdiction;
- (d) adjudicate matters that relate to minors who are beyond parental or adult control and to establish appropriate authority over these minors by means of placement and control orders;

¹³Subsection 6 of the 1993 version of § 78-3a-25 was at issue in Mohi. It provided:

....

(6) (a) When a petition in the case of a juvenile 16 years of age or older alleges any class of criminal homicide, attempted criminal homicide, or any other offense that would be a capital offense or a first degree felony if committed by an adult, the juvenile is subject to the jurisdiction of the juvenile court except under Subsection (6)(b).

(b) If an indictment on the charge is returned by a grand jury or a criminal information is filed by a county attorney or district attorney, the juvenile court is divested of jurisdiction under Section 78-3a-16. The charge shall be made and the proceedings regarding the charge shall be conducted in every respect as if the juvenile were an adult. A copy of the information or indictment shall be filed forthwith in the juvenile court as notice to that court.

....

The full statute is copied in Addendum C to this brief.

¹⁴Counsel for Angilau concede the legitimacy of these statutory purposes.

- (e) adjudicate matters that relate to abused, neglected, and dependent children and to provide care and protection for minors by placement, protection, and custody orders;
- (f) remove a minor from parental custody only where the minor's safety or welfare, or the public safety, may not otherwise be adequately safeguarded; and
- (g) consistent with the ends of justice, act in the best interests of the minor in all cases and preserve and strengthen family ties.

The statutory classifications are categorical and thus do not “promote public safety and individual accountability by the imposition of appropriate sanctions on persons who have committed acts in violation of law.” But see 78A-6-102(5)(a). Particularly because the classifications expedite the arrival of children in adult jails and prisons, they do not “order appropriate measures to promote guidance and control, preferably in the minor's own home, as an aid in the prevention of future unlawful conduct and the development of responsible citizenship.” But see id., subsection (b). Nor do they “where appropriate, order rehabilitation, reeducation and treatment” of people whose acts bring them within the juvenile court’s jurisdiction,” as subsection (c) contemplates. The statutory classifications of the direct file statute result in the placement of children in adult facilities regardless of whether they are “beyond parental or adult control.” But see id., subsection (d). They do not require adjudication of whether children have been abused, neglected or are dependent, and are not designed to promote care and protection of the children. But see id., subsection (e). They result in children’s being removed from parents’ custody, without regard to whether their safety or welfare, or the public safety so require. But see id., subsection (f). Nor are the statutory classifications “consistent with the ends of justice,” or designed to serve “the best interests of the minor in all cases” or “preserve and strengthen family ties.” But see id.,

subsection (g).

The direct file statute does not serve the interests discussed in the floor debates. Senator Hillyard told the senate that the amendments would insure that all 16 and 17 year olds charged with murder would be automatically prosecuted in adult court (R. 106) and that the amendments would protect society by expediting the arrival in prison of those children who would end up there eventually (R. 108). Representative Fox told the House members that the amendments would give district court exclusive jurisdiction over juveniles age 16 and older charged with murder and aggravated murder (R. 115). Contrary to the legislative intentions articulated in the floor debates, the statutory classifications give prosecutors greater discretion over these children than they enjoyed under the statutory scheme stricken in Mohi, because their charging decision not only selects the offense, but by charging in an adult court information or juvenile court petition also selects the forum, and is not subject to a recall hearing or appeal.

To the extent that the rise in serious juvenile crimes requires treatment of juvenile offenders in the adult system in order to protect the public or deter juvenile crime, section 78A-6-701 does nothing to further those interests, because they are already served by the certification statutes. Utah Code Ann. § 78A-6-603(3) provides:

(3) Except as provided in Section 78A-6-702 [the Serious Youth Offender statute], in the case of a minor 14 years of age or older, the county attorney, district attorney, or attorney general may commence an action by filing a criminal information and a motion requesting the juvenile court to waive its jurisdiction and certify the minor to the district court.

The certification statute, Utah Code Ann. § 78A-6-703, permits prosecutors to seek adult prosecution of all juveniles fourteen years of age and older when they are charged with

felonious conduct and are otherwise appropriately prosecuted in adult court. See Utah Code Ann. § 78A-6-703.¹⁵ This statute

¹⁵That statute provides:

(1) If a criminal information filed in accordance with Subsection 78A-6-602(3) alleges the commission of an act which would constitute a felony if committed by an adult, the juvenile court shall conduct a preliminary hearing.

(2) At the preliminary hearing the state shall have the burden of going forward with its case and the burden of establishing:

(a) probable cause to believe that a crime was committed and that the defendant committed it; and

(b) by a preponderance of the evidence, that it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction.

(3) In considering whether or not it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider, and may base its decision on, the finding of one or more of the following factors:

(a) the seriousness of the offense and whether the protection of the community requires isolation of the minor beyond that afforded by juvenile facilities;

(b) whether the alleged offense was committed by the minor in concert with two or more persons under circumstances which would subject the minor to enhanced penalties under Section 76-3-203.1 were he an adult;

(c) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(d) whether the alleged offense was against persons or property, greater weight being given to offenses against persons, except as provided in Section 76-8-418;

(e) the maturity of the minor as determined by considerations of his home, environment, emotional attitude, and pattern of living;

(f) the record and previous history of the minor;

(g) the likelihood of rehabilitation of the minor by use of facilities available to the juvenile court;

(h) the desirability of trial and disposition of the entire offense in one court when the minor's associates in the alleged offense are adults who will be charged with a crime in the district court;

(i) whether the minor used a firearm in the commission of an offense; and

(j) whether the minor possessed a dangerous weapon on or about school premises as provided in Section 76-10-505.5.

(4) The amount of weight to be given to each of the factors listed in Subsection (3) is discretionary with the court.

(5)(a) Written reports and other materials relating to the minor's mental, physical, educational, and social history may be considered by the court.

(b) If requested by the minor, the minor's parent, guardian, or other interested party, the

requires full consideration of the Kent factors by the juvenile court, see id., and section 78A-6-704(1) provides for immediate appellate review of any certification order. Any child subject to prosecution under the direct file statute could be prosecuted in adult court under

court shall require the person or agency preparing the report and other material to appear and be subject to both direct and cross-examination.

(6) At the conclusion of the state's case, the minor may testify under oath, call witnesses, cross-examine adverse witnesses, and present evidence on the factors required by Subsection (3).

(7) If the court finds the state has met its burden under Subsection (2), the court may enter an order:

(a) certifying that finding; and

(b) directing that the minor be held for criminal proceedings in the district court.

(8) If an indictment is returned by a grand jury, the preliminary examination held by the juvenile court need not include a finding of probable cause, but the juvenile court shall proceed in accordance with this section regarding the additional consideration referred to in Subsection (2)(b).

(9) The provisions of Section 78A-6-115, Section 78A-6-1111, and other provisions relating to proceedings in juvenile cases are applicable to the hearing held under this section to the extent they are pertinent.

(10) A minor who has been directed to be held for criminal proceedings in the district court is not entitled to a preliminary examination in the district court.

(11) A minor who has been certified for trial in the district court shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

(12) When a minor has been certified to the district court under this section or when a criminal information or indictment is filed in a court of competent jurisdiction before a committing magistrate charging the minor with an offense described in Section 78A-6-702, the jurisdiction of the Division of Juvenile Justice Services and the jurisdiction of the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against him, except as provided in Subsection (14).

(13) If a minor enters a plea to, or is found guilty of any of the charges filed or on any other offense arising out of the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

(14) The juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

the certification statute if the proper judicial inquiry determined that the individual facts and circumstances of his or her case and situation merited adult court prosecution.

In sum, the direct file statute creates classes of children who are treated in vastly more punitive and destructive ways than similarly situated children are, without justification. The statutory classifications and means do not reasonably relate to or serve legitimate governmental interests, but rather, put our children and society at significant risk of constitutional abuses by the government.

The discussion of federal equal protection analysis, *infra*, is equally applicable in this context, albeit the Court has authority to grant greater protection under state constitutional law if necessary. E.g., Merrill v. Utah Labor Com'n, 2009 UT 26 ¶ 7, 2009 WL 1098294. To insure that children in Utah are fully protected regardless of what a federal court might do, the Court should strike the direct file statute under both the Uniform Operation of Laws provision, and may also strike it under the federal law set forth in Point IV subpoint B of this brief, *infra*.

2. State Prohibition of Special Laws

The constitutional provision forbidding the enactment of special or private laws, Article VI § 26, forbids the legislature to enact laws that create unnatural classifications, which classifications separate out people who are not legitimately particularized or separated from the group of which they are a natural or intrinsic part. See, e.g., Utah Farm Bureau Insurance Company v. Utah Insurance Guarantee Association, 564 P.2d 751, 754 (Utah 1977). Sixteen and seventeen year old children are properly included in, and not separated

out of, the natural classification of children for purposes of prosecution and punishment, because their brains are not fully developed, and as a consequence, they lack the adult ability to consider the consequences of their actions and to control their impulses. See discussion of Roper and *amicus* briefs *supra*, R. 120-200. Particularly in the context of criminal law, these children are a natural part of the class of other redeemable children who are vulnerable and deserve our protection and forgiveness. See id. Conversely, there is nothing about the class of sixteen and seventeen year old children charged with murder and aggravated murder that makes them a natural and intrinsic class. The statute which groups them separately from other children is not a permissible general law, but is instead a special or private law, which is expressly forbidden by the Utah Constitution. See Utah Farm Bureau, supra. Accordingly, the Court should strike § 78A-6-701 under Article VI § 26, and order the information dismissed from adult court for want of jurisdiction.

3. State Due Process

Our state constitutional Due Process provision, Article I § 7, forbids laws which are arbitrary and capricious in operation, or which do not rationally relate to the statutory goal. See, e.g., State v. Copeland, 765 P.2d 1266, 1271-72 (Utah 1988) (striking portions of a criminal sentencing statute because they were imported from an inapposite portion of the code and did not sensibly apply toward the ultimate purpose of the statute). As detailed above, the classifications of children by age and offense are arbitrary and capricious because many children who are charged with the qualifying offenses and are within the qualifying age group are not appropriately prosecuted or sentenced in adult court. Moreover, those

classifications do not logically or reasonably serve the articulated purposes of the Juvenile Court Act of which the statute is a part. Rather, the classifications will result in the prosecution of some children as adults, despite the fact that those children do not belong in the adult system. Contrary to the legislative intentions articulated in the floor debates, the statutory classifications give prosecutors greater discretion over these children than they enjoyed under the statutory scheme stricken in Mohi, because their charging decision not only selects the offense, but also selects the forum, and is not subject to a recall hearing or appeal. Their charging decision effectively supplants the Kent hearing, but is not anywhere near a constitutionally satisfactory substitute. Cf. id. Accordingly, the Court should also rely on Article I § 7 in striking § 78A-6-701.

B. FEDERAL EQUAL PROTECTION ANALYSIS

Section 1 of the Fourteenth Amendment guarantees the right to equal protection of the law. Because the adult court's jurisdictional statute classifies juveniles in arbitrary ways, the jurisdictional statute violates principles of equal protection. See, e.g., Wood v. University of Utah Medical Center, 67 P.3d 436, 449 2002 UT 134, ¶¶ 33-34 (Utah 2002)(recognizing that state constitution requires all laws apply uniformly to similarly situated people, and that the federal constitution requires laws to apply in similar fashion to similarly situated individuals).

Under the Fourteenth Amendment, analysis begins with the selection of the level of judicial scrutiny to apply to a law. The most lenient form of scrutiny is the rational basis test, wherein the party challenging a law must demonstrate that a statute's classifications are

wholly irrational. See, e.g., Hodel v. Indiana, 452 U.S. 314, 331-32 (1981). Intermediate scrutiny is applied to laws which impact important albeit not constitutional rights, or which burden a quasi-suspect class. See, e.g., Clark v. Jeter, 486 U.S. 456, 461 (1988). This intermediate level of scrutiny requires the party defending the law to establish that it substantially relates to an important governmental interest. See, e.g., Wengler v. Druggists Mutual Insurance Company, 446 U.S. 142, 150 (1980). The most probing form of scrutiny, strict scrutiny, applies to legislation which impinges on a fundamental right or burdens a suspect class. See, e.g., Plyler v. Doe, 457 U.S. 202, 216-17 (1982). This test requires the party defending the law to show that it is narrowly tailored to serve a compelling government interest. See, e.g., Adarand Constructors Inc. v. Pena, 515 U.S. 200, 227 (1995).

As noted above, while age-based classifications are normally reviewed for a rational basis, see, Merrill v. Utah Labor Com'n, 2009 UT 26 ¶ 12, 2009 WL 1098294, the statute at issue should be reviewed with strict scrutiny because it impinges upon the liberty and lives of our children – fundamental rights. Their education is likewise jeopardized by prosecution in the adult system, and is another important right to consider in selecting strict, or at least intermediate scrutiny. See Plyler, supra (applying what appears to be intermediate scrutiny to law impacting right to education).

While children are likely not a traditional suspect class, our Courts do afford them special constitutional protections tailored to their vulnerability and special needs. See, e.g., Roper, supra; In re Gault, 387 U.S. 1, 41, 55 (1967) (recognizing juvenile rights against self-incrimination and to counsel); Breed v. Jones, 421 U.S. 519, 541 (1975) (recognizing juvenile right against double jeopardy); Belotti v. Baird, 443 U.S. 622, 633 (1979) (discussing minors’

right of access to abortion). The fact that they have no political power because they cannot vote and have no meaningful access to the legislative process, further calls upon the Court to protect their interests. See United States v. Carolene Products Company, 304 U.S. 144, 153 n.4 (1938) (recognizing the duty of the Courts to protect those small and insular minorities who have no meaningful access to participation in the legislative/political process).

As discussed above, the statutory classifications do not serve any rational governmental objective, and are not narrowly or rationally tailored to serve any such interest. As detailed above, the classifications do not serve the codified purposes of the Juvenile Court Act. Contrary to the legislative intentions articulated in the floor debates, the statutory classifications give prosecutors greater discretion over these children than they enjoyed under the statutory scheme stricken in Mohi, because their charging decision not only selects the offense, but also selects the forum, and is not subject to a judicial recall or other hearing or appeal. Particularly because any case falling under the direct file statute could be handled properly through the certification process, the direct file statute serves no rational purpose. Rather, it creates classes of children who are treated in vastly more punitive and destructive ways than others are, without justification or rationale, and facilitates discriminatory action by state actors.

Accordingly, the Court should strike the statute under the Federal Equal Protection Clause.

V. THE TRIAL COURT'S LEGAL ANALYSIS IN UPHOLDING THE DIRECT FILE STATUTE WAS INCORRECT.

A. The Direct File Statute Grants Prosecutors Greater Discretion than did the Direct File Statute Stricken as Unconstitutional in Mohi.

The trial court's order denying the motion to dismiss erroneously holds that the statute stricken as unconstitutional in Mohi was amended to remove the language granting prosecutors unfettered discretion to file such cases in adult court (R. 443). As detailed above, the statute stricken in Mohi, in Addendum C, has been amended significantly, but not in any way that obviates or diminishes the unconstitutional discretion prosecutors have to file cases in adult or juvenile court. Compare Utah Code Ann. § 78-3a-25(6)(b) (1993) (Addendum C) with Utah Code Ann. § 78A-6-701 (Addendum B). Rather, the statutory amendments have effectively augmented the prosecutorial discretion to file juvenile cases directly in adult court, by insulating direct filing decisions from judicial review. The recall hearings which were available under the Mohi statutory scheme are no longer afforded to direct file juveniles. By obviating the recall hearings, the amendments also obviate appellate review, resulting in even greater prosecutorial discretion to file in adult court than existed under the Mohi statute.

The trial court ruled that a prosecutor's discretion under the direct file statute is the traditional discretion afforded to all prosecutors in all criminal cases, to review the evidence and select which charges to file (R. 443-44). This reasoning fails to recognize that prosecutors are not required to file informations or indictments over which district courts have exclusive jurisdiction under 78A-6-701, but have full authority to prosecute the juveniles by way of petition in juvenile court under Utah Code Ann. § 78A-6-103(1)(a),

which provides:

(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning:

(a) a child who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding offenses in Subsection 78A-7-106(2).^{16]}

Under the current direct file scheme, prosecutors not only have discretion to select the charge, but also, have discretion to choose between the drastically different juvenile and adult court fora and attendant consequences.¹⁷ Because the prosecutorial discretion provided by

¹⁶Section 78A-7-106 governs those misdemeanors and infractions which are subject to prosecution in justice courts.

¹⁷Juvenile and adult courts are dramatically different in approach. In juvenile court the best interests of the juveniles are the prime focus, and the goals are to redirect the juveniles' behavior toward obedience to the law, and to protect them from the adverse consequences of more severe sentences and permanent records attendant to adult courts. See State v. Schofield, 2002 UT 132, ¶ 16, 63 P.3d 667; Houskeeper v. State, 2008 UT 78, ¶¶ 27 and 50 and n.21, 197 P.3d 636. Juvenile courts are generally closed to the public, to serve the compelling government interest in shielding juveniles from publicity that might otherwise hinder their full rehabilitation. See, e.g., In re v. N.H.B., 769 P.2d 844, 847-49 (Utah App. 1989). Juvenile courts try to redirect juveniles while they are at home with their parents and families. Utah Code Ann. §78A-6-102(5). If it is necessary to house them in secure facilities, we require those facilities to comply with Juvenile Justice Services standards, which are carefully designed in an effort to insure that the holding conditions are humane, safe, and foster continuing education and positive child development. See, e.g., Utah Code Ann. §62A-7-104. Juvenile courts aim to unify and strengthen families, and parents of juveniles are generally required to participate in the rehabilitation of the juveniles. Utah Code Ann. §§ 78A-6-103(1)(k), 78A-6-111 and 78A-6-102(5).

Juvenile and adult courts are dramatically different in potential consequences. Juveniles are subject to confinement only until they reach the age of 21 in the juvenile system, whereas they may be imprisoned for life in the adult system, see, e.g., In re N.H.B., 769 P.2d 844, 847-49 (Utah App. 1989). Moreover, given that children prosecuted in adult court are often housed in adult facilities, life may also be at stake. See, e.g., Katz Levi, "State v. Mohi: State Sanctioned Abuse," 10 Journal of Law and Family Studies 173, 174-76 and accompanying notes (2007) (explaining how incarcerating children in adult jails endangers children, and increases the risk of suicide).

the current direct file statute exceeds that permitted by the unconstitutional statute stricken in Mohi, this Court should order the current statute stricken. See id.

B. The Constitutions Must Apply to the Decision as to Whether a Juvenile is Prosecuted in Adult Court or in Juvenile Court.

The district court summarily rejected several constitutional challenges to the direct file statute, including those premised on the Due Process, Unnecessary Rigor, Uniform Operation of Laws, and Special Laws Prohibition sections in the Utah Constitution, and on the Due Process and Equal Protection provisions in the Federal Constitution. The court did not address any of these provisions individually or on the merits, but found that the constitutional arguments were “necessarily unavailing” because juveniles have no constitutional right to be treated as juveniles (R. 444) (relying on State v. Mohi, 901 P.2d at 1005, and State v. Bell, 785 P.2d 390, 399 (Utah 1989)).

Our State and Federal Constitutions are the supreme law of the land, and there is no area of legislation which is immune from constitutional scrutiny. See, e.g., American Bush v. City of South Salt Lake, 2006 UT 40, ¶ 23, 140 P.3d 1235 (citing, e.g., Marbury v. Madison, 5 U.S. (1 Cranch) 137, 176-77, 2 L.Ed 60 (1803)).

While there are cases which support the trial court’s reasoning and intimate that there are no life or liberty interests at stake in the choice of adult or juvenile forums, and that children may be prosecuted in adult court anytime,¹⁸ these cases diverge from the reality that

¹⁸E.g., State v. D.M.Z., 830 P.2d 314, 316 (Utah App. 1992). Burnham v. Hayward, 663 P.2d 65, 67 (Utah 1983); State in re Atcheson, 575 P.2d 181 (Utah 1978).

liberty and life interests are at issue in this legal context, see, e.g., In re N.H.B., 769 P.2d 844, 847-49 (Utah App. 1989), Katz-Levi article, *supra*. They do not square with State v. Mohi, 901 P.2d 991, 995-86 (Utah 1995), which demonstrates that statutes governing whether juveniles are prosecuted in adult or juvenile court are subject to constitutional scrutiny. Nor do they square with Kelley v. Kaiser, 992 F.2d 1509 (10th Cir. 1993), which recognizes that once a state creates a juvenile court system, the federal constitution requires a Kent hearing as a constitutional requirement of any adult court prosecution. See Mohi, 901 P.2d at 1001 n.14, 1003 n.19, and 1005 n.24., citing Kaiser, 992 F.2d at 1515. Accordingly, this Court should overrule precedents such as Burnham, Atcheson and D.M.Z., because the choice to charge a juvenile in adult court, and the liberty and life interests which realistically are at stake, require both judicial scrutiny and constitutional protection. See Mohi, 901 P.2d at 996 n.2, quoting Kent, 383 U.S. at 554. See also Points II and III of this brief, *supra*.

C. The Trial Court's Effort to Reconcile
Statutory Conflicts Was Incorrect and
Exceeded Proper Judicial Bounds.

Because Angilau is a minor, and is not charged under the Serious Youth Offender statute, 78A-6-702, or the certification statute, 78A-6-703, his case should be adjudicated as a civil matter in a juvenile court exercising equitable powers. Utah Code Ann. § 78A-6-116.¹⁹

¹⁹That statute provides,

(1) Except as provided in Sections 78A-6-702 and 78A-6-703, proceedings in a minor's case shall be regarded as a civil proceeding with the court exercising equitable powers.

(2) An adjudication by a juvenile court that a minor is within its jurisdiction

The majority of the trial court's decision reflects its effort to square the direct filing statute, which grants adult courts exclusive jurisdiction over sixteen and seventeen year olds charged by information or indictment with murder, with the statute which forbids minors to be charged with crimes unless they are charged under the certification statute, under the Serious Youth offender statute, or with traffic violations (R. 439-42).

The latter statute, Section 78A-6-116, provides in relevant part:

(1) Except as provided in Sections 78A-6-702 [the Serious Youth Offender Statute] and 78A-6-703 [the certification statute], proceedings in a minor's case shall be regarded as a civil proceeding with the court exercising equitable powers.

....

(3) A minor may not be charged with a crime or convicted in any court except as provided in Sections 78A-6-702 [the Serious Youth Offender statute] and 78A-6-703 [the certification statute], and in cases involving traffic violations. When a petition has been filed in the juvenile court, the minor may not later be subjected to criminal prosecution based on the same facts except as provided in Section 78A-6-702 or 78A-6-703.

The trial court first concluded that the legislature made a conscious choice to exclude

under Section 78A-6-103 is not considered a conviction of a crime, except in cases involving traffic violations. An adjudication may not operate to impose any civil disabilities upon the minor nor to disqualify the minor for any civil service or military service or appointment.

(3) A minor may not be charged with a crime or convicted in any court except as provided in Sections 78A-6-702 and 78A-6-703, and in cases involving traffic violations. When a petition has been filed in the juvenile court, the minor may not later be subjected to criminal prosecution based on the same facts except as provided in Section 78A-6-702 or 78A-6-703.

....

the direct file statute, 78A-6-701, from the list of exceptions to juvenile court jurisdiction in 78A-6-116(3), *supra* (R. 441-42). This conclusion was premised on a review of various statutory revisions, wherein the direct file provision in effect at the time of Mohi was renumbered and amended out of the statute describing the jurisdiction of the juvenile courts, to a “stand alone” provision. The court reasoned that because the legislature renumbered various provisions of the juvenile code, and set forth the direct file statute in an independent “stand alone” format, the legislature did not view the direct file statute and 78A-6-113(3) as conflicting (R. 441-42).

There appears to be no rule of statutory construction which supports the trial court’s reasoning that the renumbering or reformatting of a statute, or its excision from a general statute and placement in a “stand alone” statute, leads to valid inferences as to legislative intent. Moreover, the trial court’s reasoning does not square with the fact that the certification statute, which was also part of the same general statute as the direct file statute at the time of Mohi, was also renumbered and made a stand-alone statute, but is still expressly mentioned as an exception to the cases which must be adjudicated as civil matter in juvenile court in 78A-6-116(3), *supra*. The fact that the legislature specified certification cases, Serious Youth Offender cases, and traffic cases as exceptions to juvenile court jurisdiction is properly interpreted as an indication that the legislature did not intend to include directly filed cases among the list of exceptions. *Cf., Field v. Boyer Co., L.C.*, 952 P.2d 1078 (Utah 1998) (recognizing the maxim of statutory construction, *expressio unius est exclusio alterius*,” which means the expression of one thing implies the exclusion of another); Hansen v. Wilkinson, 658 P.2d 1216, 1217 (Utah 1983) (“It probably is not wholly inaccurate to suppose that

ordinarily when people say one thing they do not mean something else.”) (quoting 2a C. Sands, *Sutherland Statutory Construction*, § 47.01 (4th ed. 1973)).

The district court attempted to reconcile the conflict in the plain language of the two statutes, by viewing 78A-6-116(3) as if it applied only to proceedings in the juvenile court’s original jurisdiction. Thus, the court literally rewrote subsection of the statute as if it read,

“[In all cases over which the juvenile court has original jurisdiction, a] minor may not be charged with a crime or convicted in any court except as provided in Section 78A-6-702 and 78A-6-703, and in cases involving traffic violations.”

(R. 442, brackets by the trial court).

The court’s interpretation of subsection 3 of the statute is incorrect, because it interprets the first sentence of subsection 3 as if traffic offenses fall within the original jurisdiction of the juvenile courts. See R. 442. Many traffic offenses are actually excluded from juvenile court jurisdiction, and instead often lie in the original jurisdiction of the justice of the peace courts, or in district courts when there are no justice courts in the municipality where the case arises, if the defendants are sixteen years of age or older. See Utah Code Ann. §§ 78A-7-106 (2) (recognizing justice court jurisdiction over many traffic and other misdemeanors committed by those sixteen years of age and older); 78A-6-103(1)(a) (excluding cases falling within 78A-7-106(2) from juvenile court jurisdiction), 78A-5-102(9) (recognizing district court jurisdiction over many traffic offenses committed by those sixteen or older in jurisdictions without justice courts).

The court’s interpretation of subsection 3 does not account for subsection 1 of the same statute, 78A-6-116, which, similarly to the actual subsection 3, recognizes Serious

Youth Offender and certification cases the only exceptions to the general rule that minors' cases are to be civil proceedings wherein the juvenile courts exercise equitable powers.

Subsection (1) provides:

(1) Except as provided in Sections 78A-6-702 and 78A-6-703, proceedings in a minor's case shall be regarded as a civil proceeding with the court exercising equitable powers.

Nor does the court's interpretation of 78A-6-116(3) square with Utah Code Ann. §78A-6-601, which requires district court judges to transfer minors' cases back to the juvenile courts unless they are involved in Serious Youth Offender or certification cases, and makes no mention of direct file minors' cases. That statute provides:

(1) If, during the pendency of a criminal or quasi-criminal proceeding in another court, including a preliminary hearing, it is determined that the person charged is under 21 years of age and was less than 18 years of age at the time of committing the alleged offense, that court shall transfer the case to the juvenile court, together with all the papers, documents, and transcripts of any testimony except as provided in Sections 78A-6-702 [the Serious Youth Offender statute] and 78A-6-703 [the Certification statute].

(2) The court making the transfer shall order the person to be taken immediately to the juvenile court or to a place of detention designated by the juvenile court, or shall release him to the custody of his parent or guardian or other person legally responsible for him, to be brought before the juvenile court at a time designated by it. The juvenile court shall then proceed as provided in this chapter.

Our courts do have the obligation to resolve statutory conflicts and harmonize statutes by reading them together. *See, e.g., Board of Education of Jordan School District v. Sandy City Corporation*, 2004 UT 37, ¶ 20, 94 P.3d 234. The trial court's efforts to do so failed to account for the legislature's enactment of the foregoing statutes.

Moreover, the trial court's interpretive efforts exceeded proper judicial bounds. Courts do not have the ability to infer substantive statutory terms. *See, e.g., Burns v.*

Boyden, 2006 UT 14, ¶ 16, 133 P.3d 370. Under the structure of the Utah Constitution, it is the function of the legislature to draft and enact specific and understandable laws, not the courts'. See Constitution of Utah, Article VI § 1 and Article V § 1. The constitutional doctrine of separation of powers logically requires the courts' fealty to the plain language of the laws enacted by the legislature.

The preference for literalism in determining the effect of a statute is based on the constitutional doctrine of separation of powers. The courts owe fidelity to the will of the legislature. What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.

Sutherland, Statutory Construction, § 46.03. "The doctrine is fundamental...that in arriving at the intention of the Legislature the courts must give effect to the plain meaning of the language used to express the intention.... The plain and obvious meaning of the language must be adopted; anything else would be an unwarranted assumption of legislative authority." State v. Davis 184 P. 161, 165 (Utah 1919). Thus, the court was in error in rewriting subsection (3) of § 78A-6-116.

When the legislature enacts an unconstitutional statute, it is the constitutional role of the courts to enforce the constitutions and strike the statute. See, e.g., Dean v. Rampton, 556 P.2d 205, 206-07 (Utah 1976).

CONCLUSION

This Court should strike the direct file statute on constitutional grounds and reverse the trial court's order denying the motion to dismiss the information and case from adult

court.

Respectfully submitted this 12 day of November, 2009.

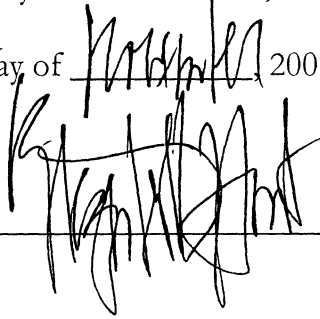
YENGICH, RICH & XAIZ
ATTORNEYS FOR DEFENDANT

By: _____

Ronald M. Yengich
Earl Xaiz
Elizabeth Hunt

CERTIFICATE OF HAND DELIVERY

I hereby certify that a true and correct copy of the foregoing was hand-delivered to the Criminal Appeals Division of the Utah Attorney General's Office, 160 East 300 South, 6th floor, Salt Lake City, Utah 84114, this 12 day of November, 2009.



Addendum A

MEMORANDUM DECISION UPHOLDING CONSTITUTIONALITY
OF DIRECT FILING STATUTE

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

FILED DISTRICT COURT
Third Judicial District

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

JUN 15 2009

SALT LAKE COUNTY
Deputy Clerk

STATE OF UTAH,

:

MEMORANDUM DECISION AND
ORDER

Plaintiff,

:

vs.

:

CASE NO. 091900608FS

RICKY ANGILAU,

:

JUDGE VERNICE TREASE

Defendant.

Defendant Ricky Angilau submitted a Motion to Dismiss Information for Lack of Jurisdiction. The State filed a memorandum in opposition and Defendant submitted reply memorandum. The motion was argued to the Court on April 6, 2009. Now, being fully advised, the Court rules as follows:

BACKGROUND

Defendant Ricky Angilau was arrested on January 21, 2009 after allegedly firing a gun into a crowd and killing one boy. Defendant was 16 years old at the time of the alleged offense. He was charged with murder and other offenses under Utah's direct-file statute, Section 78A-6-701. Defendant moves this Court to declare the direct file statute unconstitutional and dismiss the criminal Information for lack of jurisdiction.

DISCUSSION

Defendant argues that the direct-file statute cannot be harmonized with other statutes in Utah's Juvenile Court Act, Section 78A-6-101, *et seq.* Section 78A-6-116(3) provides that a minor

may be charged with a crime only under the Serious Youth Offender Act,¹ the Certification Hearing statute,² or a traffic violation. Because the direct-file statute expressly grants district courts exclusive jurisdiction over a minor charged by Information or indictment of murder, it necessarily permits a minor to be charged and convicted without the proceedings against the minor being initiated under the Serious Youth Offender Act or Certification Hearing statute.

Defendant argues that based upon a plain reading of the statutes, there is a conflict between the requirements of Section 78A-6-116(3) and the exclusive jurisdiction granted to district courts under Section 78A-6-701. If Defendant's argument were correct and the legislature intended Section 78A-6-116(3) to require cases such as this to proceed in juvenile court, this interpretation of the statute would effectively render the direct-file statute inoperable.

Because the Court "cannot presume that the legislature intended to create a conflict," Madsen v. Brown, 701 P.2d 1086, 1090 (Utah 1985), when presented with apparently inconsistent statutory provisions, the "statutes must be looked at together, in the light of established rules of statutory construction, with a view to reconciling any apparent conflict and giving each of them effect according to their purpose insofar as that can be accomplished." United States Smelting, Ref. & Mining Co. v. Nielsen, 437 P.2d 199, 201 (Utah 1968) (Crockett, C.J., concurring). See also Board

¹ The Serious Youth Offender Act requires that a youth 16 years or older must be charged by criminal Information for one of several enumerated felonies, excluding murder or aggravated murder. If the juvenile court finds probable cause and certain mitigating factors are absent, it must order the youth to be bound over in district court. Section 78A-6-702.

² The Certification Hearing statute provides that the prosecutor may file a criminal Information and move the juvenile court to certify to the district court a youth 14 years or older charged with a felony. If the juvenile court finds probable cause, it must conduct a preliminary hearing to determine whether it would be "contrary to the best interests of the minor or the public for the juvenile court to retain jurisdiction." Section 78A-6-703.

of Education of Jordan Sch. Dist. v. Sandy City Corp., 2004 UT 37, ¶20, 94 P.3d 234 (courts “have an obligation to harmonize alleged inconsistencies within and between statutes, avoiding conflicts when possible.”).

The legislative history of these statutes demonstrates that excluding Section 78A-6-701 as an exception under Section 78A-6-116(3) was not the result of inadvertence, but a conscious choice on the part of the legislature and, therefore, it is reasonable to conclude that the legislature did not consider Section 78A-6-116(3) and Section 78A-6-701 to be in conflict.

Unlike today, where the direct-file statute is a separate statute that grants district courts exclusive jurisdiction over minors charged with murder, in 1995 the language of the direct-file statute was included as a subsection in the statute that set forth the original jurisdiction of the juvenile courts. See Utah Code Ann. § 78-3a-16(1) (1995) (“The adult judicial system shall have exclusive original jurisdiction over all persons 16 years of age or older charged by information or indictment with . . . an offense which would be murder or aggravated murder if committed by an adult.”). See also Utah Code Ann. § 78-3a-16(2)-(6) (1995) (establishing the original jurisdiction of the juvenile courts). At that time, Section 78-3a-44, which was a precursor to Section 78A-6-116, expressly included the direct-file language from Section 78-3a-16 in addition to the Serious Youth Offender Act and Certification Hearing statute. See Utah Code Ann. § 78-3a-44(4) (1995) (“A child may not be charged with a crime or convicted in any court except as provided in Subsection 78-3a-16(1)[, the direct-file statute], Section 78-3a-25, [the certification statute], or 78-3a-25.1[, the serious youth offender statute,] and in cases involving traffic violations.”).

In 1996, various provisions of the Juvenile Court Act were amended and re-numbered. Specifically, the direct-file language was removed from Section 78-3a-16(1) and enacted as a stand-

alone statute setting forth the exclusive jurisdiction of the district courts. See Utah Code Ann. § 78-3a-601 (1996). At the same time, Section 78-3a-44 was re-numbered as Section 78-3a-515 and, importantly, reference to the direct-file statute was removed. From these legislative enactments, it appears that the legislature believed that by creating a stand-alone statute addressing the district court's exclusive jurisdiction in cases involving a minor charged with murder, it was no longer necessary to include the direct-file language in the newly re-numbered Section 78-3a-515. Finally, in 2008, Section 78-3a-515 was again re-numbered as Section 78A-6-116, and the direct-file statute was re-numbered as Section 78A-6-701. Based upon the foregoing legislative history, it is reasonable to conclude that, despite their apparent inconsistency, the legislature did not consider Section 78A-6-116 and Section 78A-6-701 to be in conflict.

Because the Court is required to at least attempt to reconcile apparently inconsistent statutory provisions, and particularly in light of the fact that the legislature likely did not consider Section 78A-6-116(3) and Section 78A-6-701 to be in conflict, the Court must seek an interpretation that, if possible, renders the statutes consistent without undermining the purposes for which they were enacted. Perhaps the easiest way to do this is to view Section 78A-6-116 as applying only to proceedings originating in the juvenile court. Section 78A-6-116(3) would be read as follows: "[In all cases over which the juvenile court has original jurisdiction, a] minor may not be charged with a crime or convicted in any court except as provided in Sections 78A-6-702 and 78A-6-703, and in cases involving traffic violations." Utah Code Ann. § 78A-6-116(3). This interpretation does not substantively alter Section 78A-6-116(3) and, because Section 78A-6-701 does not involve cases over which the juvenile court has original jurisdiction, it reconciles any apparent conflict with the direct-file statute.

Defendant next argues that the direct-file statute permits constitutionally excessive prosecutorial discretion because it fails to provide prosecutors with guidelines for determining whether to file a criminal Information for murder directly in district court or file a petition in juvenile court. In 1995, the Utah Supreme Court held that the previous version of the direct-file statute violated the Utah Constitution's Uniform Operations of Law clause because it permitted identical offenses to be brought either to the district court or juvenile court. State v. Mohi, 901 P.2d 991 (Utah 1995). The Mohi Court invalidated the portion of the direct-file statute that gave the prosecutor unfettered discretion as to where to file the juvenile's charge of murder. Following Mohi, the Utah legislature modified the direct-file statute and removed the discretionary language.

Defendant argues that the current statute still grants excessive prosecutorial discretion. This Court agrees with the State's reading of the direct-file statute that a 16 or 17 year old charged with what would be murder if committed by an adult must be brought directly to the district court. The prosecution's only discretion is the legitimate choice of which charge or charges to file based upon a consideration of the evidence. This traditional type of discretion has been repeatedly upheld as constitutional. The direct-file statute simply permits the prosecutor to select "a charge to fit the circumstances of a defendant [This] requires a legal determination on the part of the prosecutor as to which elements of an offense can likely be proved at trial." Id. at 1003. According to Mohi, it is this "charging decision that is protected by traditional notions of prosecutor discretion." Id. Absent a showing of selective prosecution, which is not constitutionally protected, see United States v. Batchelder, 442 U.S. 114, 125 (U.S. 1979) ("Selectivity in the enforcement of criminal laws is, of course, subject to constitutional constraints."), the prosecutorial discretion allowed by the direct-file statute is no different than the prosecutor's traditional exercise of discretion in any criminal case

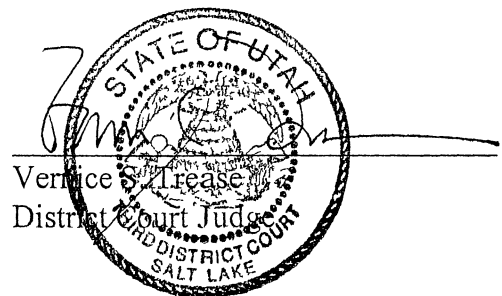
and is not, therefore, constitutionally impermissible.

Defendant also raises several challenges to the constitutionality of the direct-file statute, including arguments based upon due process, equal protection, unnecessary rigor, and policy considerations. Each of these arguments fail for the simple reason that the Utah Supreme Court has held that “juveniles have no constitutional right to be tried as juveniles.” Mohi, 901 P.2d at 1005 (citing State v. Bell, 785 P.2d 390, 399 (Utah 1989)). As noted in Mohi, when persons are “properly charged in adult court in the first place, [they] . . . have no state due process right to a hearing to determine whether they can be retained as adults for trial. [T]he state is not required to give juvenile status to anyone.” Id. Because Defendant has no constitutional “‘right’ to juvenile treatment, [he] cannot claim that [his] juvenile status was unconstitutionally removed by the legislature.” Id. Thus, his constitutional arguments are necessarily unavailing.

CONCLUSION

Based on the foregoing, the Court determines that Defendant has not demonstrated that Utah’s direct-file statute, Section 78A-6-701, is in conflict with the remaining sections of the Juvenile Court Act, Section 78A-6-101, *et seq.*, nor does it violate Constitutional principles. Accordingly, the Court denies Defendants’ Motion to Dismiss Information for Lack of Jurisdiction.

DATED this 15 day of June, 2009.



CERTIFICATE OF MAILING

I certify that I mailed a true and correct copy of the foregoing Memorandum Decision and

Order dated this 15 day of June 2009, postage prepaid, to the following:

Ronald J. Yengich
Elizabeth Hunt
Yengich, Rich & Xaiz
175 E. 400 S., Ste. 400
Salt Lake City, Utah 84111
Attorneys for Defendant

Lohra Miller, District Attorney
George Vo-Duc, Deputy District Attorney
Aaron Flater, Deputy District Attorney
111 East Broadway, Ste. 400
Salt Lake City, Utah 84111

Addendum B

CURRENT DIRECT FILE STATUTE

Utah Code Ann. § 78A-6-701 (2009)

(1) The district court shall have exclusive original jurisdiction over all persons 16 years of age or older charged by information or indictment with:

(a) an offense which would be murder or aggravated murder if committed by an adult; or

(b) an offense which would be a felony if committed by an adult if the minor has been previously committed to a secure facility as defined in Section 62A-7-101. This Subsection (1)(b) shall not apply if the offense is committed in a secure facility.

(2) When the district court has exclusive original jurisdiction over a minor under this section, it also has exclusive original jurisdiction over the minor regarding all offenses joined with the qualifying offense, and any other offenses, including misdemeanors, arising from the same criminal episode. The district court is not divested of jurisdiction by virtue of the fact that the minor is allowed to enter a plea to, or is found guilty of, a lesser or joined offense.

(3)(a) Any felony, misdemeanor, or infraction committed after the offense over which the district court takes jurisdiction under Subsection (1) or (2) shall be tried against the defendant as an adult in the district court or justice court having jurisdiction.

(b) If the qualifying charge under Subsection (1) results in an acquittal, a finding of not guilty, or a dismissal of the charge in the district court, the juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor.

Addendum C

DIRECT FILE STATUTE IN EFFECT AT TIME OF MOHI

(1) (a) If the petition in the case of a juvenile 14 years of age or older alleges he committed an act which would constitute a felony if committed by an adult, and if the court after full investigation and a hearing finds that it would be contrary to the best interests of the juvenile or of the public to retain jurisdiction, the court may enter an order certifying that finding and directing that the juvenile be held for criminal proceedings in the district court and that a hearing be held before a committing magistrate as in other felony cases.

(b) The provisions of Section 78-3a-35 and other provisions relating to proceedings in juvenile's cases are applicable to the hearing held under this section to the extent they are pertinent.

(2) In considering whether or not to waive jurisdiction over the juvenile, the juvenile court shall consider the following factors:

(a) the seriousness of the offense and whether the protection of the community requires isolation of the juvenile beyond that afforded by juvenile facilities;

(b) whether the alleged offense was committed by the juvenile in concert with two or more persons under circumstances which would subject the juvenile to enhanced penalties under Section 76-3-203.1 were he an adult;

(c) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(d) whether the alleged offense was against persons or property, greater weight being given to offenses against persons;

(e) the maturity of the juvenile as determined by considerations of his home, environment, emotional attitude, and pattern of living;

(f) the record and previous history of the juvenile;

(g) the likelihood of rehabilitation of the juvenile by use of facilities available to the juvenile court;

(h) the desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the district court;

(i) whether the juvenile uses a firearm in the commission of an offense; and

(j) whether the juvenile possesses a dangerous weapon on or about school premises as provided in Section 76-10-505.5.

(3) The amount of weight to be given to each of the factors listed in Subsection (2) is discretionary with the court.

(4) The juvenile court judge may enter an order certifying a juvenile to stand trial as an adult upon making a finding of any one or more of those factors set forth in Subsection (2).

(5) (a) The certification hearing is a dispositional proceeding, and while the juvenile court may hear evidence of the crime to establish there is a reasonable relationship between the charge and the juvenile, the court need not hold a preliminary hearing to establish probable cause that the juvenile committed the offense.

(b) Written reports and other materials relating to the juvenile's mental, physical, educational, and social history shall be considered by the court, but the court, if requested by the juvenile, his parent, guardian, or other interested party, shall require the person, if reasonably available, or agency preparing the report and other material to appear and be subject to both direct and cross-examination.

(6) (a) When a petition in the case of a juvenile 16 years of age or older alleges any class of criminal homicide, attempted criminal homicide, or any other offense that would be a capital offense or a first degree felony if committed by an adult, the juvenile is subject to the jurisdiction of the juvenile court except under Subsection (6)(b).

(b) If an indictment on the charge is returned by a grand jury or a criminal information is filed by a county attorney or district attorney, the juvenile court is divested of jurisdiction under Section 78-3a-16. The charge shall be made and the proceedings regarding the charge shall be conducted in every respect as if the juvenile were an adult. A copy of the information or indictment shall be filed forthwith in the juvenile court as notice to that court.

(7) When a juvenile has been certified to the adult judicial system or when a criminal information or indictment is filed in a court of competent jurisdiction before a committing magistrate charging the juvenile with an offense under Subsection (6), the jurisdiction of the Division of Youth Corrections is terminated, and the jurisdiction of the juvenile court over the juvenile is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against him, except as provided in Subsections (9) and (10).

(8) (a) Upon conviction a judge, may impose the penalties set forth in the criminal code or with the approval of the Division of Youth Corrections, the judge may commit the juvenile to the care, custody, and jurisdiction of the Division of Youth Corrections under the conditions specified by the division.

(b) A juvenile may be convicted under this section on the charges filed or on any other offense arising out of the same criminal episode.

(9) The juvenile court under Section 78-3a-16 and the Division of Youth Corrections regain jurisdiction and any authority previously exercised over the juvenile when:

(a) a magistrate determines there is insufficient probable cause for the juvenile to stand trial on the allegation or amended allegation;

(b) there is an acquittal or finding of not guilty or dismissal of the charges; or

(c) the matter is recalled under Subsection (10).

(10) (a) The juvenile or his parents, guardian, or custodian may request a hearing in juvenile court to recall jurisdiction to the juvenile court by filing a motion in the juvenile court. The motion shall be filed within ten calendar days from the date of the filing of the information. Upon receiving the motion, the juvenile court has jurisdiction to conduct a hearing and rule upon the motion to recall juvenile court jurisdiction. A hearing shall be held on the request within 15 calendar days of the filing.

(b) In determining whether or not to recall jurisdiction the juvenile court judge shall consider:

- (i) the juvenile's chronological age;
- (ii) the juvenile's legal record; and
- (iii) the seriousness of the charge.

(c) The juvenile court judge may deny the motion upon a finding of one or more of the factors listed in Subsection (10)(b).

(d) If the juvenile court recalls jurisdiction under this subsection, the juvenile shall be returned to the juvenile court for further proceedings, which may include certification.

Addendum D

CONSTITUTIONAL PROVISIONS AND STATUTES

Constitution of Utah, Article I § 7

No person shall be deprived of life, liberty or property, without due process of law.

Constitution of Utah, Article I § 9

Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishments be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor.

Constitution of Utah, Article I § 24

All laws of a general nature shall have uniform operation.

Constitution of Utah, Article I § 27

Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.

Constitution of Utah, Article V § 1

The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

Constitution of Utah, Article VI § 1

- (1) The Legislative power of the State shall be vested in:
 - (a) a Senate and House of Representatives which shall be designated the Legislature of the State of Utah; and
 - (b) the people of the State of Utah as provided in Subsection (2).
- (2)(a)(i) The legal voters of the State of Utah, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:
 - (A) initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote of those voting on the legislation, as provided by statute; or
 - (B) require any law passed by the Legislature, except those laws passed by a two-thirds vote of the members elected to each house of the Legislature, to be submitted to the voters of the State, as provided by statute, before the law may take effect.
- (ii) Notwithstanding Subsection (2)(a)(i)(A), legislation initiated to allow, limit, or prohibit the taking of wildlife or the season for or method of taking wildlife shall be adopted upon

approval of two-thirds of those voting.

(b) The legal voters of any county, city, or town, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:

(i) initiate any desired legislation and cause it to be submitted to the people of the county, city, or town for adoption upon a majority vote of those voting on the legislation, as provided by statute; or

(ii) require any law or ordinance passed by the law making body of the county, city, or town to be submitted to the voters thereof, as provided by statute, before the law or ordinance may take effect.

Constitution of Utah, Article VI § 26

No private or special law shall be enacted where a general law can be applicable.

United States Constitution, Amendment XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Utah Code Ann. §62A-7-104 (2009)

(1) The division is responsible for all youth offenders committed to it by juvenile courts for secure confinement or supervision and treatment in the community.

(2) The division shall:

(a) establish and administer a continuum of community, secure, and nonsecure programs for all youth offenders committed to the division;

(b) establish and maintain all detention and secure facilities and set minimum standards for those facilities;

(c) establish and operate prevention and early intervention youth services programs for nonadjudicated youth placed with the division; and

(d) establish observation and assessment programs necessary to serve youth offenders

committed by the juvenile court for short-term observation under Subsection 78A-6-117(2)(e), and whenever possible, conduct the programs in settings separate and distinct from secure facilities for youth offenders.

(3) The division shall place youth offenders committed to it in the most appropriate program for supervision and treatment.

(4) In any order committing a youth offender to the division, the juvenile court shall specify whether the youth offender is being committed for secure confinement or placement in a community-based program. The division shall place the youth offender in the most appropriate program within the category specified by the court.

(5) The division shall employ staff necessary to:

(a) supervise and control youth offenders in secure facilities or in the community;

(b) supervise and coordinate treatment of youth offenders committed to the division for placement in community-based programs; and

(c) control and supervise nonadjudicated youth placed with the division for temporary services in receiving centers, youth services, and other programs established by the division.

(6) Youth in the custody or temporary custody of the division are controlled or detained in a manner consistent with public safety and rules promulgated by the division. In the event of an unauthorized leave from a secure facility, detention center, community-based program, receiving center, home, or any other designated placement, division employees have the authority and duty to locate and apprehend the youth, or to initiate action with local law enforcement agencies for assistance.

(7) The division shall establish and operate compensatory-service work programs for youth offenders committed to the division by the juvenile court. The compensatory-service work program shall:

(a) provide labor to help in the operation, repair, and maintenance of public facilities, parks, highways, and other programs designated by the division;

(b) provide educational and prevocational programs in cooperation with the State Board of Education for youth offenders placed in the program; and

(c) provide counseling to youth offenders.

(8) The division shall establish minimum standards for the operation of all private residential and nonresidential rehabilitation facilities which provide services to juveniles who have committed a delinquent act, in this state or in any other state.

(9) In accordance with policies established by the board, the division shall provide regular training for staff of secure facilities, detention staff, case management staff, and staff of the community-based programs.

(10)(a) The division is authorized to employ special function officers, as defined in Section 53-13-105, to locate and apprehend minors who have absconded from division custody, transport minors taken into custody pursuant to division policy, investigate cases, and carry out other duties as assigned by the division.

(b) Special function officers may be employed through contract with the Department of Public Safety, any P.O.S.T. certified law enforcement agency, or directly hired by the division.

(11) The division shall designate employees to obtain the saliva DNA specimens required under Section 53-10-403. The division shall ensure that the designated employees receive appropriate training and that the specimens are obtained in accordance with accepted protocol.

(12) The division shall register with the Department of Corrections any person who:

(a) has been adjudicated delinquent based on an offense listed in Subsection 77-27-21.5(1)(n)(i);

(b) has been committed to the division for secure confinement; and

(c) remains in the division's custody 30 days prior to the person's 21st birthday.

Utah Code Ann. §78A-3-102 (2009)

(1) The Supreme Court has original jurisdiction to answer questions of state law certified by a court of the United States.

(2) The Supreme Court has original jurisdiction to issue all extraordinary writs and authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees or in aid of its jurisdiction.

(3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) a judgment of the Court of Appeals;

(b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment by the Court of Appeals;

(c) discipline of lawyers;

(d) final orders of the Judicial Conduct Commission;

(e) final orders and decrees in formal adjudicative proceedings originating with:

(i) the Public Service Commission;

(ii) the State Tax Commission;

(iii) the School and Institutional Trust Lands Board of Trustees;

(iv) the Board of Oil, Gas, and Mining;

(v) the state engineer; or

(vi) the executive director of the Department of Natural Resources reviewing actions of the Division of Forestry, Fire, and State Lands;

(f) final orders and decrees of the district court review of informal adjudicative proceedings of agencies under Subsection (3)(e);

(g) a final judgment or decree of any court of record holding a statute of the United States or this state unconstitutional on its face under the Constitution of the United States or the Utah Constitution;

(h) interlocutory appeals from any court of record involving a charge of a first degree or capital felony;

(i) appeals from the district court involving a conviction or charge of a first degree felony or capital felony;

(j) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction; and

(k) appeals from the district court of orders, judgments, or decrees ruling on legislative subpoenas.

(4) The Supreme Court may transfer to the Court of Appeals any of the matters over which the Supreme Court has original appellate jurisdiction, except:

(a) capital felony convictions or an appeal of an interlocutory order of a court of record involving a charge of a capital felony;

(b) election and voting contests;

- (c) reapportionment of election districts;
- (d) retention or removal of public officers;
- (e) matters involving legislative subpoenas; and
- (f) those matters described in Subsections (3)(a) through (d).

(5) The Supreme Court has sole discretion in granting or denying a petition for writ of certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review those cases certified to it by the Court of Appeals under Subsection (3)(b).

(6) The Supreme Court shall comply with the requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its review of agency adjudicative proceedings.

Utah Code Ann. § 78-3a-25 (1993)

(1) (a) If the petition in the case of a juvenile 14 years of age or older alleges he committed an act which would constitute a felony if committed by an adult, and if the court after full investigation and a hearing finds that it would be contrary to the best interests of the juvenile or of the public to retain jurisdiction, the court may enter an order certifying that finding and directing that the juvenile be held for criminal proceedings in the district court and that a hearing be held before a committing magistrate as in other felony cases.

(b) The provisions of Section 78-3a-35 and other provisions relating to proceedings in juvenile's cases are applicable to the hearing held under this section to the extent they are pertinent.

(2) In considering whether or not to waive jurisdiction over the juvenile, the juvenile court shall consider the following factors:

(a) the seriousness of the offense and whether the protection of the community requires isolation of the juvenile beyond that afforded by juvenile facilities;

(b) whether the alleged offense was committed by the juvenile in concert with two or more persons under circumstances which would subject the juvenile to enhanced penalties under Section 76-3-203.1 were he an adult;

(c) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(d) whether the alleged offense was against persons or property, greater weight being given to offenses against persons;

(e) the maturity of the juvenile as determined by considerations of his home, environment, emotional attitude, and pattern of living;

(f) the record and previous history of the juvenile;

(g) the likelihood of rehabilitation of the juvenile by use of facilities available to the juvenile court;

(h) the desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults who will be charged with a crime in the district court;

(i) whether the juvenile uses a firearm in the commission of an offense; and

(j) whether the juvenile possesses a dangerous weapon on or about school premises as provided in Section 76-10-505.5.

(3) The amount of weight to be given to each of the factors listed in Subsection (2) is discretionary with the court.

(4) The juvenile court judge may enter an order certifying a juvenile to stand trial as an adult upon making a finding of any one or more of those factors set forth in Subsection (2).

(5) (a) The certification hearing is a dispositional proceeding, and while the juvenile court may hear evidence of the crime to establish there is a reasonable relationship between the charge and the juvenile, the court need not hold a preliminary hearing to establish probable cause that the juvenile committed the offense.

(b) Written reports and other materials relating to the juvenile's mental, physical, educational, and social history shall be considered by the court, but the court, if requested by the juvenile, his parent, guardian, or other interested party, shall require the person, if reasonably available, or agency preparing the report and other material to appear and be subject to both direct and cross-examination.

(6) (a) When a petition in the case of a juvenile 16 years of age or older alleges any class of criminal homicide, attempted criminal homicide, or any other offense that would be a capital offense or a first degree felony if committed by an adult, the juvenile is subject to the jurisdiction of the juvenile court except under Subsection (6)(b).

(b) If an indictment on the charge is returned by a grand jury or a criminal information is filed by a county attorney or district attorney, the juvenile court is divested of jurisdiction under Section 78-3a-16. The charge shall be made and the proceedings regarding the charge shall be conducted in every respect as if the juvenile were an adult. A copy of the information or indictment shall be filed forthwith in the juvenile court as notice to that court.

(7) When a juvenile has been certified to the adult judicial system or when a criminal information or indictment is filed in a court of competent jurisdiction before a committing magistrate charging the juvenile with an offense under Subsection (6), the jurisdiction of the Division of Youth Corrections is terminated, and the jurisdiction of the juvenile court over the juvenile is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against him, except as provided in Subsections (9) and (10).

(8) (a) Upon conviction a judge, may impose the penalties set forth in the criminal code or with the approval of the Division of Youth Corrections, the judge may commit the juvenile to the care, custody, and jurisdiction of the Division of Youth Corrections under the conditions specified by the division.

(b) A juvenile may be convicted under this section on the charges filed or on any other offense arising out of the same criminal episode.

(9) The juvenile court under Section 78-3a-16 and the Division of Youth Corrections regain jurisdiction and any authority previously exercised over the juvenile when:

(a) a magistrate determines there is insufficient probable cause for the juvenile to stand trial on the allegation or amended allegation;

(b) there is an acquittal or finding of not guilty or dismissal of the charges; or

(c) the matter is recalled under Subsection (10).

(10) (a) The juvenile or his parents, guardian, or custodian may request a hearing in juvenile court to recall jurisdiction to the juvenile court by filing a motion in the juvenile court. The motion shall be filed within ten calendar days from the date of the filing of the information. Upon receiving the motion, the juvenile court has jurisdiction to conduct a hearing and rule upon the motion to recall juvenile court jurisdiction. A hearing shall be held on the request within 15 calendar days of the filing.

(b) In determining whether or not to recall jurisdiction the juvenile court judge shall consider:

- (i) the juvenile's chronological age;
- (ii) the juvenile's legal record; and
- (iii) the seriousness of the charge.

(c) The juvenile court judge may deny the motion upon a finding of one or more of the factors listed in Subsection (10)(b).

(d) If the juvenile court recalls jurisdiction under this subsection, the juvenile shall be returned to the juvenile court for further proceedings, which may include certification.

Utah Code Ann. § 78A-5-102 (2009)

(1) The district court has original jurisdiction in all matters civil and criminal, not excepted in the Utah Constitution and not prohibited by law.

(2) The district court judges may issue all extraordinary writs and other writs necessary to carry into effect their orders, judgments, and decrees.

(3) The district court has jurisdiction over matters of lawyer discipline consistent with the rules of the Supreme Court.

(4) The district court has jurisdiction over all matters properly filed in the circuit court prior to July 1, 1996.

(5) The district court has appellate jurisdiction over judgments and orders of the justice court as outlined in Section 78A-7-118 and small claims appeals filed pursuant to Section 78A-8-106.

(6) Appeals from the final orders, judgments, and decrees of the district court are under Sections 78A-3-102 and 78A-4-103.

(7) The district court has jurisdiction to review:

(a) agency adjudicative proceedings as set forth in Title 63G, Chapter 4, Administrative Procedures Act, and shall comply with the requirements of that chapter, in its review of agency adjudicative proceedings; and

(b) municipal administrative proceedings in accordance with Section 10-3-703.7.

(8) Notwithstanding Subsection (1), the district court has subject matter jurisdiction in class B misdemeanors, class C misdemeanors, infractions, and violations of ordinances only if:

(a) there is no justice court with territorial jurisdiction;

(b) the offense occurred within the boundaries of the municipality in which the district courthouse is located and that municipality has not formed, or formed and then dissolved, a justice court; or

(c) they are included in an indictment or information covering a single criminal episode alleging the commission of a felony or a class A misdemeanor.

(9) If the district court has subject matter jurisdiction pursuant to Subsection (5) or (8), it also has jurisdiction over offenses listed in Section 78A-7-106 even if those offenses are committed by a person 16 years of age or older.

(10) The district court has jurisdiction of actions under Title 78B, Chapter 7, Part 2, Child Protective Orders, if the juvenile court transfers the case to the district court.

Utah Code Ann. §78A-6-102 (2009)

(1) There is established for the state a juvenile court.

(2) The juvenile court is a court of record. It shall have a seal, and its judges, clerks, and referees have the power to administer oaths and affirmations.

- (3) The juvenile court is of equal status with the district courts of the state.
- (4) The juvenile court is established as a forum for the resolution of all matters properly brought before it, consistent with applicable constitutional and statutory requirements of due process.
- (5) The purpose of the court under this chapter is to:
- (a) promote public safety and individual accountability by the imposition of appropriate sanctions on persons who have committed acts in violation of law;
 - (b) order appropriate measures to promote guidance and control, preferably in the minor's own home, as an aid in the prevention of future unlawful conduct and the development of responsible citizenship;
 - (c) where appropriate, order rehabilitation, reeducation, and treatment for persons who have committed acts bringing them within the court's jurisdiction;
 - (d) adjudicate matters that relate to minors who are beyond parental or adult control and to establish appropriate authority over these minors by means of placement and control orders;
 - (e) adjudicate matters that relate to abused, neglected, and dependent children and to provide care and protection for minors by placement, protection, and custody orders;
 - (f) remove a minor from parental custody only where the minor's safety or welfare, or the public safety, may not otherwise be adequately safeguarded; and
 - (g) consistent with the ends of justice, act in the best interests of the minor in all cases and preserve and strengthen family ties.

(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning:

(a) a child who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding offenses in Subsection 78A-7-106(2);

(b) a person 21 years of age or older who has failed or refused to comply with an order of the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's 21st birthday; however, the continuing jurisdiction is limited to causing compliance with existing orders;

(c) a child who is an abused child, neglected child, or dependent child, as those terms are defined in Section 78A-6-105;

(d) a protective order for a child pursuant to the provisions of Title 78B, Chapter 7, Part 2, Child Protective Orders, which the juvenile court may transfer to the district court if the juvenile court has entered an ex parte protective order and finds that:

(i) the petitioner and the respondent are the natural parent, adoptive parent, or step parent of the child who is the object of the petition;

(ii) the district court has a petition pending or an order related to custody or parent-time entered under Title 30, Chapter 3, Divorce, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act, or Title 78B, Chapter 15, Utah Uniform Parentage Act, in which the petitioner and the respondent are parties; and

(iii) the best interests of the child will be better served in the district court;

(e) appointment of a guardian of the person or other guardian of a minor who comes within the court's jurisdiction under other provisions of this section;

- (f) the emancipation of a minor in accordance with Part 8, Emancipation;
- (g) the termination of the legal parent-child relationship in accordance with Part 5, Termination of Parental Rights Act, including termination of residual parental rights and duties;
- (h) the treatment or commitment of a mentally retarded minor;
- (i) a minor who is a habitual truant from school;
- (j) the judicial consent to the marriage of a child under age 16 upon a determination of voluntariness or where otherwise required by law, employment, or enlistment of a child when consent is required by law;
- (k) any parent or parents of a child committed to a secure youth corrections facility, to order, at the discretion of the court and on the recommendation of a secure facility, the parent or parents of a child committed to a secure facility for a custodial term, to undergo group rehabilitation therapy under the direction of a secure facility therapist, who has supervision of that parent's or parents' child, or any other therapist the court may direct, for a period directed by the court as recommended by a secure facility;
- (l) a minor under Title 55, Chapter 12, Interstate Compact for Juveniles;
- (m) the treatment or commitment of a mentally ill child. The court may commit a child to the physical custody of a local mental health authority in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health , but not directly to the Utah State Hospital;
- (n) the commitment of a child in accordance with Section 62A-15-301;
- (o) de novo review of final agency actions resulting from an informal adjudicative proceeding as provided in Section 63G-4-402; and

(p) adoptions conducted in accordance with the procedures described in Title 78B, Chapter 6, Part 1, Utah Adoption Act, when the juvenile court has previously entered an order terminating the rights of a parent and finds that adoption is in the best interest of the child.

(2) Notwithstanding Section 78A-7-106 and Subsection 78A-5-102(9), the juvenile court has exclusive jurisdiction over the following offenses committed by a child:

(a) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

(b) Section 73-18-12, reckless operation; and

(c) class B and C misdemeanors, infractions, or violations of ordinances that are part of a single criminal episode filed in a petition that contains an offense over which the court has jurisdiction.

(3) The juvenile court has jurisdiction over an ungovernable or runaway child who is referred to it by the Division of Child and Family Services or by public or private agencies that contract with the division to provide services to that child where, despite earnest and persistent efforts by the division or agency, the child has demonstrated that the child:

(a) is beyond the control of the child's parent, guardian, lawful custodian, or school authorities to the extent that the child's behavior or condition endangers the child's own welfare or the welfare of others; or

(b) has run away from home.

(4) This section does not restrict the right of access to the juvenile court by private agencies or other persons.

(5) The juvenile court has jurisdiction of all magistrate functions relative to cases arising under Section 78A-6-702.

(6) The juvenile court has jurisdiction to make a finding of substantiated, unsubstantiated, or without merit, in accordance with Section 78A-6-323.

(7) The juvenile court has jurisdiction of matters transferred to it by another trial court pursuant to Subsection 78A-7-106(7).

Utah Code Ann. § 78A-6-111 (2009)

(1) Any person required to appear who, without reasonable cause, fails to appear may be proceeded against for contempt of court, and the court may cause a bench warrant to issue to produce the person in court.

(2) In all cases when a minor is required to appear in court, the parents, guardian, or other person with legal custody of the minor shall appear with the minor unless excused by the judge.

(a) An employee may request permission to leave the workplace for the purpose of attending court if the employee has been notified by the juvenile court that his minor is required to appear before the court.

(b) An employer must grant permission to leave the workplace with or without pay if the employee has requested permission at least seven days in advance or within 24 hours of the employee receiving notice of the hearing.

(3) If a parent or other person who signed a written promise to appear and bring the child to court under Section 78A-6-112 or 78A-6-113 fails to appear and bring the child to court on the date set in the promise, or, if the date was to be set, after notification by the court, a warrant may be issued for the apprehension of that person or the child, or both.

(4) Willful failure to perform the promise is a misdemeanor if, at the time of the execution of the promise, the promisor is given a copy of the promise which clearly states that failure to appear and have the child appear as promised is a misdemeanor. The juvenile court shall have jurisdiction to proceed against the promisor in adult proceedings pursuant to Part 10, Adult Offenses.

(5) The court shall endeavor, through use of the warrant of arrest if necessary, as provided in Subsection (6), or by other means, to ensure the presence at all hearings of one or both parents or of the guardian of a child. If neither a parent nor guardian is present at the court

proceedings, the court may appoint a guardian ad litem to protect the interest of a minor. A guardian ad litem may also be appointed whenever necessary for the welfare of a minor, whether or not a parent or guardian is present.

(6) A warrant may be issued for a parent, a guardian, a custodian, or a minor if:

(a) a summons is issued but cannot be served;

(b) it is made to appear to the court that the person to be served will not obey the summons;

(c) serving the summons will be ineffectual; or

(d) the welfare of the minor requires that he be brought immediately into the custody of the court.

Utah Code Ann. § 78A-6-116 (2009)

(1) Except as provided in Sections 78A-6-702 and 78A-6-703, proceedings in a minor's case shall be regarded as a civil proceeding with the court exercising equitable powers.

(2) An adjudication by a juvenile court that a minor is within its jurisdiction under Section 78A-6-103 is not considered a conviction of a crime, except in cases involving traffic violations. An adjudication may not operate to impose any civil disabilities upon the minor nor to disqualify the minor for any civil service or military service or appointment.

(3) A minor may not be charged with a crime or convicted in any court except as provided in Sections 78A-6-702 and 78A-6-703, and in cases involving traffic violations. When a petition has been filed in the juvenile court, the minor may not later be subjected to criminal prosecution based on the same facts except as provided in Section 78A-6-702 or 78A-6-703.

(4) An adjudication by a juvenile court that a minor is within its jurisdiction under Section 78A-6-103 is considered a conviction for the purposes of determining the level of offense for which a minor may be charged and enhancing the level of an offense in the juvenile

court. A prior adjudication may be used to enhance the level or degree of an offense committed by an adult only as otherwise specifically provided.

(5) Abstracts of court records for all adjudications of traffic violations shall be submitted to the Department of Public Safety as provided in Section 53-3-218.

(6) Information necessary to collect unpaid fines, fees, assessments, bail, or restitution may be forwarded to employers, financial institutions, law enforcement, constables, the Office of Recovery Services, or other agencies for purposes of enforcing the order as provided in Section 78A-6-117.

Utah Code Ann. §78A-6-601 (2009)

(1) If, during the pendency of a criminal or quasi-criminal proceeding in another court, including a preliminary hearing, it is determined that the person charged is under 21 years of age and was less than 18 years of age at the time of committing the alleged offense, that court shall transfer the case to the juvenile court, together with all the papers, documents, and transcripts of any testimony except as provided in Sections 78A-6-702 and 78A-6-703.

(2) The court making the transfer shall order the person to be taken immediately to the juvenile court or to a place of detention designated by the juvenile court, or shall release him to the custody of his parent or guardian or other person legally responsible for him, to be brought before the juvenile court at a time designated by it. The juvenile court shall then proceed as provided in this chapter.

Utah Code Ann. § 78A-6-603 (2009)

(1) As used in this section, "citation" means an abbreviated referral and is sufficient to invoke the jurisdiction of the court in lieu of a petition.

(2) A citation shall be submitted to the court within five days of its issuance.

(3) Each copy of the citation shall contain:

(a) the name and address of the juvenile court before which the minor is to appear;

(b) the name of the minor cited;

(c) the statute or local ordinance that is alleged to have been violated;

(d) a brief description of the offense charged;

(e) the date, time, and location at which the offense is alleged to have occurred;

(f) the date the citation was issued;

(g) the name and badge or identification number of the peace officer or public official who issued the citation;

(h) the name of the arresting person if an arrest was made by a private party and the citation was issued in lieu of taking the arrested minor into custody as provided in Section 78A-6-112;

(i) the date and time when the minor is to appear, or a statement that the minor and parent or legal guardian are to appear when notified by the juvenile court; and

(j) the signature of the minor and the parent or legal guardian, if present, agreeing to appear at the juvenile court as designated on the citation.

(4) Each copy of the citation shall contain space for the following information to be entered if known:

(a) the minor's address;

(b) the minor's date of birth;

(c) the name and address of the child's custodial parent or legal guardian, if different from the child; and

(d) if there is a victim, the victim's name, address, and an estimate of loss, except that this information shall be removed from the documents the minor receives.

(5) A citation received by the court beyond the time designated in Subsection (2) shall include a written explanation for the delay.

(6) The following offenses may be sent to the juvenile court as a citation:

(a) violations of wildlife laws;

(b) violations of boating laws;

(c) violations of curfew laws;

(d) any class B misdemeanor or less traffic violations where the person is under the age of 16;

(e) any class B or class C misdemeanor or infraction;

(f) any other infraction or misdemeanor as designated by general order of the Board of Juvenile Court Judges; and

(g) violations of Section 76-10-105 subject to the jurisdiction of the Juvenile Court.

(7) A preliminary inquiry is not required unless requested by the court.

(8) The provisions of Subsection (5) may not apply to a runaway, ungovernable, or habitually truant child.

(9) In the case of Section 76-10-105 violations committed on school property when a citation

is issued under this section, the peace officer, public official, or compliance officer shall issue one copy to the minor cited, provide the parent or legal guardian with a copy, and file a duplicate with the juvenile court specified in the citation within five days.

(10)(a) A minor receiving a citation described in this section shall appear at the juvenile court designated in the citation on the time and date specified in the citation or when notified by the juvenile court.

(b) A citation may not require a minor to appear sooner than five days following its issuance.

(11) A minor who receives a citation and willfully fails to appear before the juvenile court pursuant to a citation is subject to arrest and may be found in contempt of court. The court may proceed against the minor as provided in Section 78A-6-1101 regardless of the disposition of the offense upon which the minor was originally cited.

(12) When a citation is issued under this section, bail may be posted and forfeited under Subsection 78A-6-113(12) with the consent of:

(a) the court; and

(b) if the minor is a child, the parent or legal guardian of the child cited.

Utah Code Ann. § 78A-6-701 (2009)

(1) The district court shall have exclusive original jurisdiction over all persons 16 years of age or older charged by information or indictment with:

(a) an offense which would be murder or aggravated murder if committed by an adult; or

(b) an offense which would be a felony if committed by an adult if the minor has been previously committed to a secure facility as defined in Section 62A-7-101. This Subsection (1)(b) shall not apply if the offense is committed in a secure facility.

(2) When the district court has exclusive original jurisdiction over a minor under this section, it also has exclusive original jurisdiction over the minor regarding all offenses joined with the qualifying offense, and any other offenses, including misdemeanors, arising from the same criminal episode. The district court is not divested of jurisdiction by virtue of the fact that the minor is allowed to enter a plea to, or is found guilty of, a lesser or joined offense.

(3)(a) Any felony, misdemeanor, or infraction committed after the offense over which the district court takes jurisdiction under Subsection (1) or (2) shall be tried against the defendant as an adult in the district court or justice court having jurisdiction.

(b) If the qualifying charge under Subsection (1) results in an acquittal, a finding of not guilty, or a dismissal of the charge in the district court, the juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor.

Utah Code Ann. § 78A-6-702 (2009)

(1) Any action filed by a county attorney, district attorney, or attorney general charging a minor 16 years of age or older with a felony shall be by criminal information and filed in the juvenile court if the information charges any of the following offenses:

(a) any felony violation of:

(i) Section 76-6-103, aggravated arson;

(ii) Subsection 76-5-103(1)(a), aggravated assault, involving intentionally causing serious bodily injury to another;

(iii) Section 76-5-302, aggravated kidnaping;

(iv) Section 76-6-203, aggravated burglary;

(v) Section 76-6-302, aggravated robbery;

(vi) Section 76-5-405, aggravated sexual assault;

(vii) Section 76-10-508, discharge of a firearm from a vehicle;

(viii) Section 76-5-202, attempted aggravated murder; or

(ix) Section 76-5-203, attempted murder; or

(b) an offense other than those listed in Subsection (1)(a) involving the use of a dangerous weapon which would be a felony if committed by an adult, and the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon which also would have been a felony if committed by an adult.

(2) All proceedings before the juvenile court related to charges filed under Subsection (1) shall be conducted in conformity with the rules established by the Utah Supreme Court.

(3)(a) If the information alleges the violation of a felony listed in Subsection (1), the state shall have the burden of going forward with its case and the burden of proof to establish probable cause to believe that one of the crimes listed in Subsection (1) has been committed and that the defendant committed it. If proceeding under Subsection (1)(b), the state shall have the additional burden of proving by a preponderance of the evidence that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon.

(b) If the juvenile court judge finds the state has met its burden under this Subsection (3), the court shall order that the defendant be bound over and held to answer in the district court in the same manner as an adult unless the juvenile court judge finds that all of the following conditions exist:

(i) the minor has not been previously adjudicated delinquent for an offense involving the use of a dangerous weapon which would be a felony if committed by an adult;

(ii) that if the offense was committed with one or more other persons, the minor appears to have a lesser degree of culpability than the codefendants; and

(iii) that the minor's role in the offense was not committed in a violent, aggressive, or premeditated manner.

(c) Once the state has met its burden under this Subsection (3) as to a showing of probable cause, the defendant shall have the burden of going forward and presenting evidence as to the existence of the above conditions.

(d) If the juvenile court judge finds by clear and convincing evidence that all the above conditions are satisfied, the court shall so state in its findings and order the minor held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

(4) If the juvenile court judge finds that an offense has been committed, but that the state has not met its burden of proving the other criteria needed to bind the defendant over under Subsection (1), the juvenile court judge shall order the defendant held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.

(5) At the time of a bind over to district court a criminal warrant of arrest shall issue. The defendant shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

(6) If an indictment is returned by a grand jury charging a violation under this section, the preliminary examination held by the juvenile court judge need not include a finding of probable cause that the crime alleged in the indictment was committed and that the defendant committed it, but the juvenile court shall proceed in accordance with this section regarding the additional considerations listed in Subsection (3)(b).

(7) When a defendant is charged with multiple criminal offenses in the same information or indictment and is bound over to answer in the district court for one or more charges under this section, other offenses arising from the same criminal episode and any subsequent misdemeanors or felonies charged against him shall be considered together with those charges, and where the court finds probable cause to believe that those crimes have been committed and that the defendant committed them, the defendant shall also be bound over to the district court to answer for those charges.

(8) A minor who is bound over to answer as an adult in the district court under this section

or on whom an indictment has been returned by a grand jury is not entitled to a preliminary examination in the district court.

(9) Allegations contained in the indictment or information that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon, or is 16 years of age or older, are not elements of the criminal offense and do not need to be proven at trial in the district court.

(10) If a minor enters a plea to, or is found guilty of, any of the charges filed or any other offense arising from the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

(11) The juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Utah Code Ann. § 78A-6-703 (2009)

(1) If a criminal information filed in accordance with Subsection 78A-6-602(3) alleges the commission of an act which would constitute a felony if committed by an adult, the juvenile court shall conduct a preliminary hearing.

(2) At the preliminary hearing the state shall have the burden of going forward with its case and the burden of establishing:

(a) probable cause to believe that a crime was committed and that the defendant committed it; and

(b) by a preponderance of the evidence, that it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction.

(3) In considering whether or not it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider, and may base its decision on, the finding of one or more of the following factors:

(a) the seriousness of the offense and whether the protection of the community requires isolation of the minor beyond that afforded by juvenile facilities;

(b) whether the alleged offense was committed by the minor in concert with two or more persons under circumstances which would subject the minor to enhanced penalties under Section 76-3-203.1 were he an adult;

(c) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(d) whether the alleged offense was against persons or property, greater weight being given to offenses against persons, except as provided in Section 76-8-418;

(e) the maturity of the minor as determined by considerations of his home, environment, emotional attitude, and pattern of living;

(f) the record and previous history of the minor;

(g) the likelihood of rehabilitation of the minor by use of facilities available to the juvenile court;

(h) the desirability of trial and disposition of the entire offense in one court when the minor's associates in the alleged offense are adults who will be charged with a crime in the district court;

(i) whether the minor used a firearm in the commission of an offense; and

(j) whether the minor possessed a dangerous weapon on or about school premises as provided in Section 76-10-505.5.

(4) The amount of weight to be given to each of the factors listed in Subsection (3) is discretionary with the court.

(5)(a) Written reports and other materials relating to the minor's mental, physical, educational, and social history may be considered by the court.

(b) If requested by the minor, the minor's parent, guardian, or other interested party, the court shall require the person or agency preparing the report and other material to appear and be subject to both direct and cross-examination.

(6) At the conclusion of the state's case, the minor may testify under oath, call witnesses, cross-examine adverse witnesses, and present evidence on the factors required by Subsection (3).

(7) If the court finds the state has met its burden under Subsection (2), the court may enter an order:

(a) certifying that finding; and

(b) directing that the minor be held for criminal proceedings in the district court.

(8) If an indictment is returned by a grand jury, the preliminary examination held by the juvenile court need not include a finding of probable cause, but the juvenile court shall proceed in accordance with this section regarding the additional consideration referred to in Subsection (2)(b).

(9) The provisions of Section 78A-6-115, Section 78A-6-1111, and other provisions relating to proceedings in juvenile cases are applicable to the hearing held under this section to the extent they are pertinent.

(10) A minor who has been directed to be held for criminal proceedings in the district court is not entitled to a preliminary examination in the district court.

(11) A minor who has been certified for trial in the district court shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

(12) When a minor has been certified to the district court under this section or when a criminal information or indictment is filed in a court of competent jurisdiction before a committing magistrate charging the minor with an offense described in Section 78A-6-702, the jurisdiction of the Division of Juvenile Justice Services and the jurisdiction of the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against him, except as provided in Subsection (14).

(13) If a minor enters a plea to, or is found guilty of any of the charges filed or on any other offense arising out of the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

(14) The juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Utah Code Ann. §78A-6-704 (2009)

(1) If a criminal information filed in accordance with Subsection 78A-6-602(3) alleges the commission of an act which would constitute a felony if committed by an adult, the juvenile court shall conduct a preliminary hearing.

(2) At the preliminary hearing the state shall have the burden of going forward with its case and the burden of establishing:

(a) probable cause to believe that a crime was committed and that the defendant committed it; and

(b) by a preponderance of the evidence, that it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction.

(3) In considering whether or not it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider, and may base its decision on, the finding of one or more of the following factors:

(a) the seriousness of the offense and whether the protection of the community requires isolation of the minor beyond that afforded by juvenile facilities;

(b) whether the alleged offense was committed by the minor in concert with two or more persons under circumstances which would subject the minor to enhanced penalties under Section 76-3-203.1 were he an adult;

(c) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(d) whether the alleged offense was against persons or property, greater weight being given to offenses against persons, except as provided in Section 76-8-418;

(e) the maturity of the minor as determined by considerations of his home, environment, emotional attitude, and pattern of living;

(f) the record and previous history of the minor;

(g) the likelihood of rehabilitation of the minor by use of facilities available to the juvenile court;

(h) the desirability of trial and disposition of the entire offense in one court when the minor's associates in the alleged offense are adults who will be charged with a crime in the district court;

(i) whether the minor used a firearm in the commission of an offense; and

(j) whether the minor possessed a dangerous weapon on or about school premises as provided in Section 76-10-505.5.

(4) The amount of weight to be given to each of the factors listed in Subsection (3) is discretionary with the court.

(5)(a) Written reports and other materials relating to the minor's mental, physical, educational, and social history may be considered by the court.

(b) If requested by the minor, the minor's parent, guardian, or other interested party, the court shall require the person or agency preparing the report and other material to appear and be subject to both direct and cross-examination.

(6) At the conclusion of the state's case, the minor may testify under oath, call witnesses, cross-examine adverse witnesses, and present evidence on the factors required by Subsection (3).

(7) If the court finds the state has met its burden under Subsection (2), the court may enter an order:

(a) certifying that finding; and

(b) directing that the minor be held for criminal proceedings in the district court.

(8) If an indictment is returned by a grand jury, the preliminary examination held by the juvenile court need not include a finding of probable cause, but the juvenile court shall proceed in accordance with this section regarding the additional consideration referred to in Subsection (2)(b).

(9) The provisions of Section 78A-6-115, Section 78A-6-1111, and other provisions relating to proceedings in juvenile cases are applicable to the hearing held under this section to the extent they are pertinent.

(10) A minor who has been directed to be held for criminal proceedings in the district court is not entitled to a preliminary examination in the district court.

(11) A minor who has been certified for trial in the district court shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

(12) When a minor has been certified to the district court under this section or when a criminal information or indictment is filed in a court of competent jurisdiction before a

committing magistrate charging the minor with an offense described in Section 78A-6-702, the jurisdiction of the Division of Juvenile Justice Services and the jurisdiction of the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against him, except as provided in Subsection (14).

(13) If a minor enters a plea to, or is found guilty of any of the charges filed or on any other offense arising out of the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

(14) The juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Utah Code Ann. § 78A-7-104 (2009)

(1) A minor may, as a matter of right, appeal from:

(a) an order of the juvenile court binding the minor over to the district court as a serious youth offender pursuant to Section 78A-6-702; or

(b) an order of the juvenile court, after certification proceedings pursuant to Section 78A-6-703, directing that the minor be held for criminal proceedings in the district court.

(2) The prosecution may, as a matter of right, appeal from:

(a) an order of the juvenile court that a minor charged as a serious youth offender pursuant to Section 78A-6-702 be held for trial in the juvenile court; or

(b) a refusal by the juvenile court, after certification proceedings pursuant to Section 78A-6-703, to order that a minor be held for criminal proceedings in the district court.

Utah Code Ann. § 78A-7-106 (2009)

(1) Justice courts have jurisdiction over class B and C misdemeanors, violation of ordinances, and infractions committed within their territorial jurisdiction by a person 18 years of age or older.

(2) Except those offenses over which the juvenile court has exclusive jurisdiction, justice courts have jurisdiction over the following class B and C misdemeanors, violation of ordinances, and infractions committed within their territorial jurisdiction by a person 16 years of age or older:

(a) Title 23, Wildlife Resources Code of Utah;

(b) Title 41, Chapter 1a, Motor Vehicle Act;

(c) Title 41, Chapter 6a, Traffic Code;

(d) Title 41, Chapter 12a, Motor Vehicle Financial Responsibility Act;

(e) Title 41, Chapter 22, Off-Highway Vehicles;

(f) Title 73, Chapter 18, Safe Boating Act;

(g) Title 73, Chapter 18a, Boating--Litter and Pollution Control;

(h) Title 73, Chapter 18b, Water Safety; and

(i) Title 73, Chapter 18c, Financial Responsibility of Motorboat Owners and Operators Act.

(3) Justice Courts have jurisdiction over class C misdemeanor violations of Title 53, Chapter 3, Part 2, Driver Licensing Act.

(4) As used in this section, "the court's jurisdiction" means the territorial jurisdiction of a justice court.

(5) An offense is committed within the territorial jurisdiction of a justice court if:

(a) conduct constituting an element of the offense or a result constituting an element of the offense occurs within the court's jurisdiction, regardless of whether the conduct or result is itself unlawful;

(b) either a person committing an offense or a victim of an offense is located within the court's jurisdiction at the time the offense is committed;

(c) either a cause of injury occurs within the court's jurisdiction or the injury occurs within the court's jurisdiction;

(d) a person commits any act constituting an element of an inchoate offense within the court's jurisdiction, including an agreement in a conspiracy;

(e) a person solicits, aids, or abets, or attempts to solicit, aid, or abet another person in the planning or commission of an offense within the court's jurisdiction;

(f) the investigation of the offense does not readily indicate in which court's jurisdiction the offense occurred, and:

(i) the offense is committed upon or in any railroad car, vehicle, watercraft, or aircraft passing within the court's jurisdiction;

(ii)(A) the offense is committed on or in any body of water bordering on or within this state if the territorial limits of the justice court are adjacent to the body of water; and

(B) as used in Subsection (3)(f)(ii)(A), "body of water" includes any stream, river, lake, or reservoir, whether natural or man-made;

(iii) a person who commits theft exercises control over the affected property within the court's jurisdiction; or

(iv) the offense is committed on or near the boundary of the court's jurisdiction;

(g) the offense consists of an unlawful communication that was initiated or received within the court's jurisdiction; or

(h) jurisdiction is otherwise specifically provided by law.

(6) Justice courts have jurisdiction of small claims cases under Title 78A, Chapter 8, Small Claims Courts, if a defendant resides in or the debt arose within the territorial jurisdiction of the justice court.

(7) A justice court judge may transfer a matter in which the defendant is a child to the juvenile court for further proceedings after judgment in the justice court.

BRETT L. TOLMAN, United States Attorney (#8821)
VEDA M. TRAVIS, Assistant United States Attorney (#6449)
CY H. CASTLE, Assistant United States Attorney (#4808)
Attorneys for the United States of America
185 South State Street, Suite 300, Salt Lake City, Utah 84111
Telephone: (801) 524-5682 • Fax (801) 325-3310

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. JOSE MARTINEZ-ESQUIVEL, Defendant.	CASE: 2:07CR00918 CW MOTION FOR PRELIMINARY ORDER OF FORFEITURE JUDGE: CLARK WADDOUPS
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The United States of America, by and through its undersigned counsel, pursuant to Fed R. Crim. P. Rule 32.2(b) respectfully submits its Motion for Preliminary Order of Forfeiture in the above entitled case for the reasons set forth in a Memorandum submitted herewith.

Dated this 11th day of November, 2009.

BRETT L. TOLMAN
United States Attorney

/s/ Cy H. Castle
CY H. CASTLE
Assistant United States Attorney

From: utd_enotice@utd.uscourts.gov
To: ecf_notice@utd.uscourts.gov
Subject: Activity in Case 2:07-cr-00918-CW USA v. Garza et al MEMORANDUM in Support
Date: Wed, Nov 11, 2009 3:54 pm

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Case Name: USA v. Garza et al

Case Number: 2:07-cr-918

Filer: USA

Document Number: 163

Docket Text:

MEMORANDUM in Support by USA as to Jose Luis Martinez-Esquivel re [162] MOTION for Forfeiture of Property *Preliminary Order of Forfeiture* (Castle, Cy)

2:07-cr-918-3 Notice has been electronically mailed to:

Cy H. Castle cy.castle@usdoj.gov, ester.nuttall@usdoj.gov, heather.nielson@usdoj.gov, jessica.christensen2@usdoj.gov, stephanie.reinhart@usdoj.gov, steven.morley@usdoj.gov

Edward K. Brass ekboffice1@aol.com, mntytmj@aol.com

Robin K. Ljungberg rob@llegal.com

Ronald J. Yengich ronaldy333@aol.com, myrleen@qwestoffice.net

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BRETT L. TOLMAN, United States Attorney (#8821)
VEDA M. TRAVIS, Assistant United States Attorney (#6449)
CY H. CASTLE, Assistant United States Attorney (#4808)
Attorneys for the United States of America
185 South State Street, Suite 300, Salt Lake City, Utah 84111
Telephone: (801) 524-5682 • Fax (801) 325-3310

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	CASE: 2:07CR00918 CW
Plaintiff,	MEMORANDUM IN SUPPORT OF MOTION
v.	FOR PRELIMINARY ORDER OF
JOSE MARTINEZ-ESQUIVEL,	FORFEITURE
Defendant.	JUDGE: CLARK WADDOUPS

The United States of America has sought forfeiture of certain properties in the above captioned case and has moved the Court for a Preliminary Order of Forfeiture. The reasons for this Motion are set forth below.

1. On June 30, 2009, the United States Attorney sitting in the District of Utah charged Jose Martinez-Esquivel with violation of Bulk Cash Smuggling, all in violation of 31 U.S.C. § 5332(a).

2. The Court's jurisdiction in this matter is founded in 28 U.S.C. §1355. The United States brought forfeiture pursuant to 31 U.S.C. § 5332.

3. On June 30, 2009, the defendant, Jose Martinez-Esquivel, pleaded guilty to Count 1 of the Information. As a result of a plea of guilty to Count 1 of the Information for which the government sought forfeiture, the defendant Jose Martinez-Esquivel shall forfeit to the United States all property, real or personal, that is derived from, used, or intended to be used in violation of 31 U.S.C. § 5332(a), including but not limited to:

- 2003 Chevrolet Avalanche Truck, VIN#: 3GNEK13T83G229268

4. Forfeiture of the above named properties pursuant to 31 U.S.C. § 5332, is appropriate based on the evidence presented on the Information filed on June 30, 2009, and the Statement in Advance of Plea filed on June 30, 2009. The United States, has established the requisite nexus between the property and the offenses.

5. In accordance with the provisions of Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, the United States requests that it be permitted to undertake whatever discovery is necessary to identify, locate, or dispose of property subject to forfeiture.

WHEREFORE, the United States respectfully requests that this Court enter an Order of Forfeiture, forfeiting to the United States the property described herein and in the Information, and

order of the United States Marshal Service to maintain custody of the forfeited properties and currency in accordance with the law.

Dated this 11th day of November, 2009.

BRETT L. TOLMAN
United States Attorney

/s/ Cy H. Castle
CY H. CASTLE
Assistant United States Attorney